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OM HELL
— Stephen Moore

After Jones: O'Beirne · Kopel · Dooling

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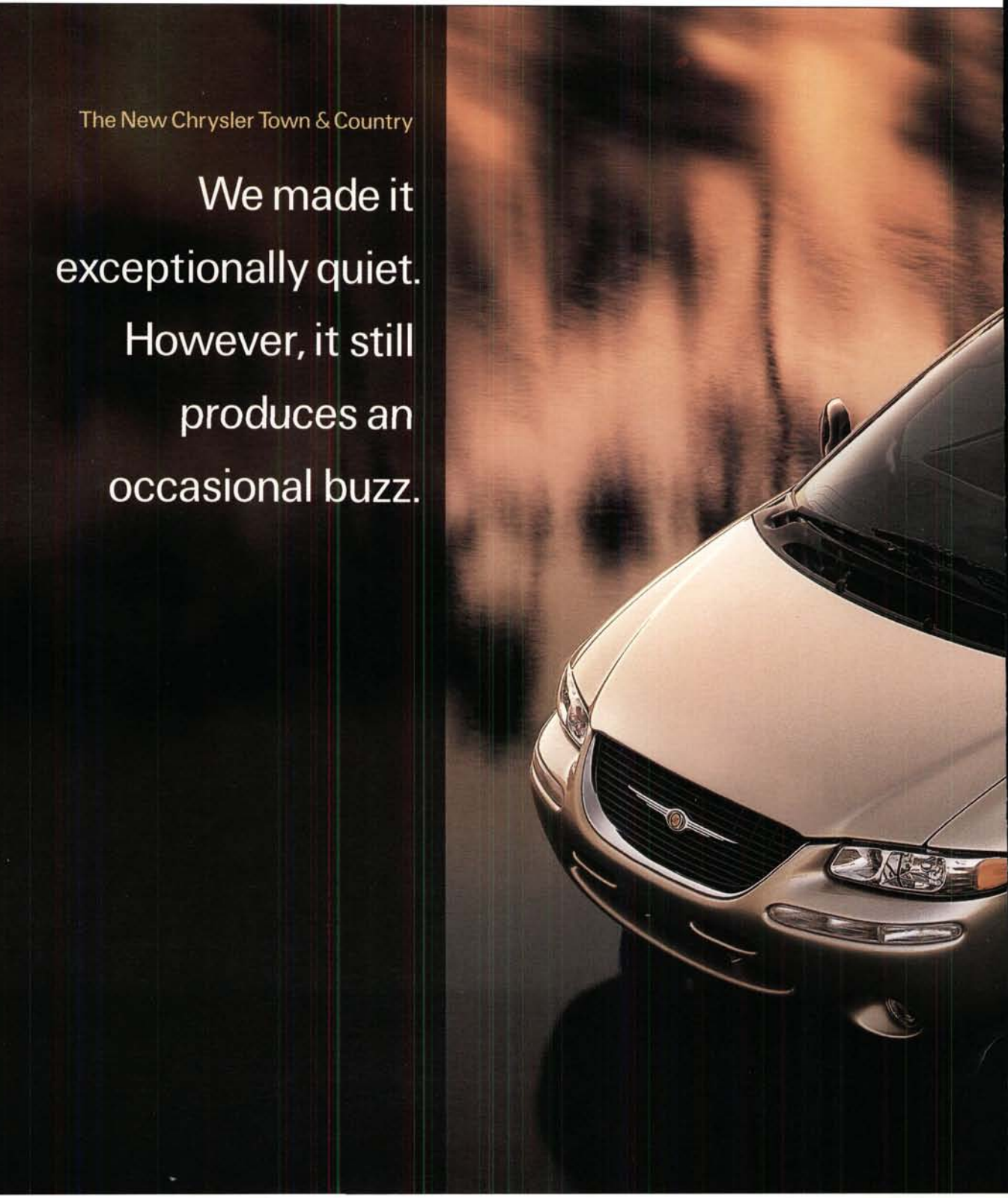

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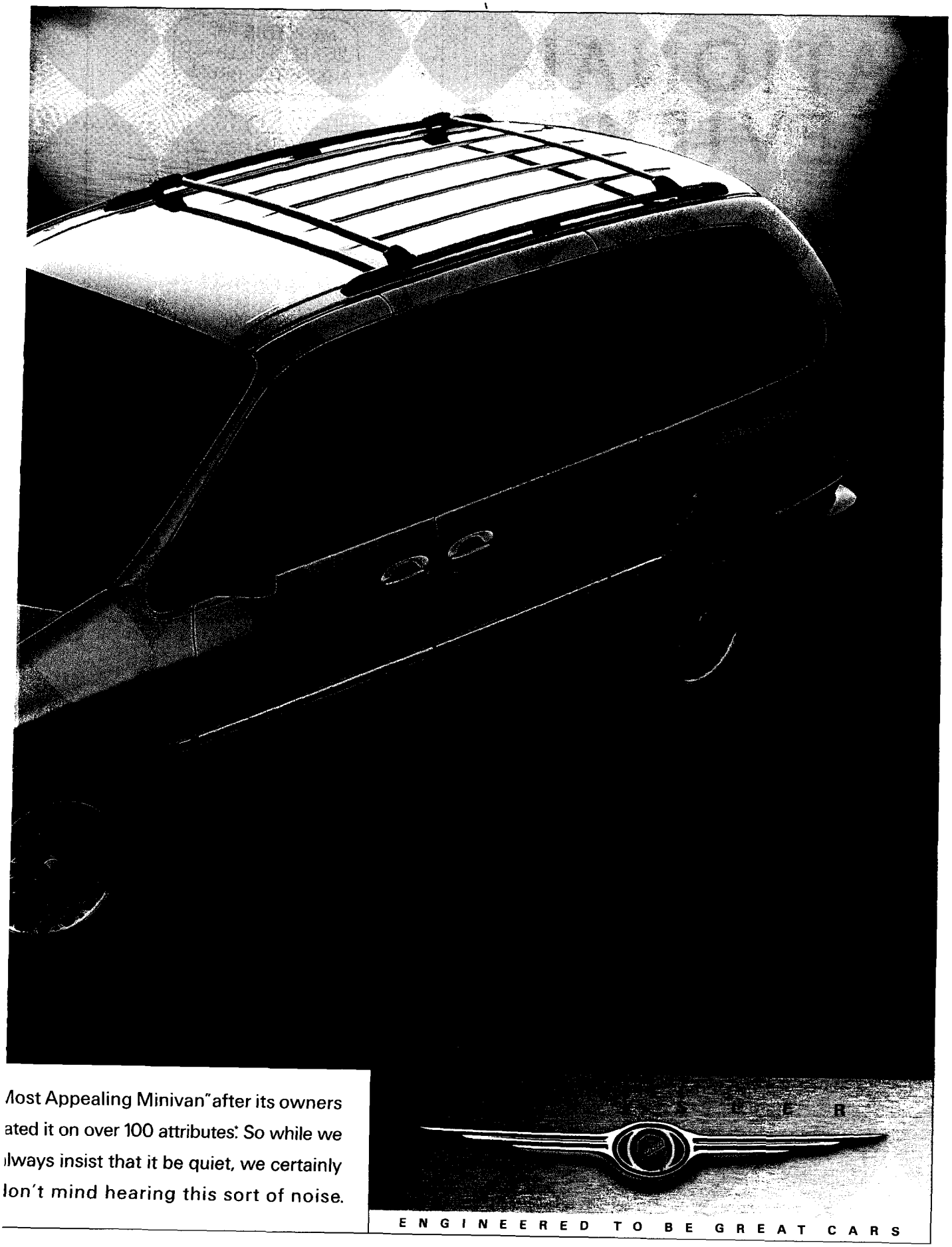

Most Appealing Minivan" after its owners
ated it on over 100 attributes. So while we
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lon't mind hearing this sort of noise.

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NATIONAL REVIEW

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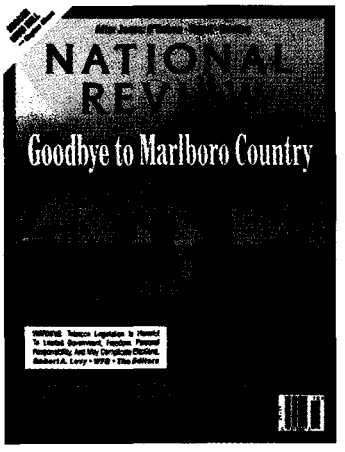

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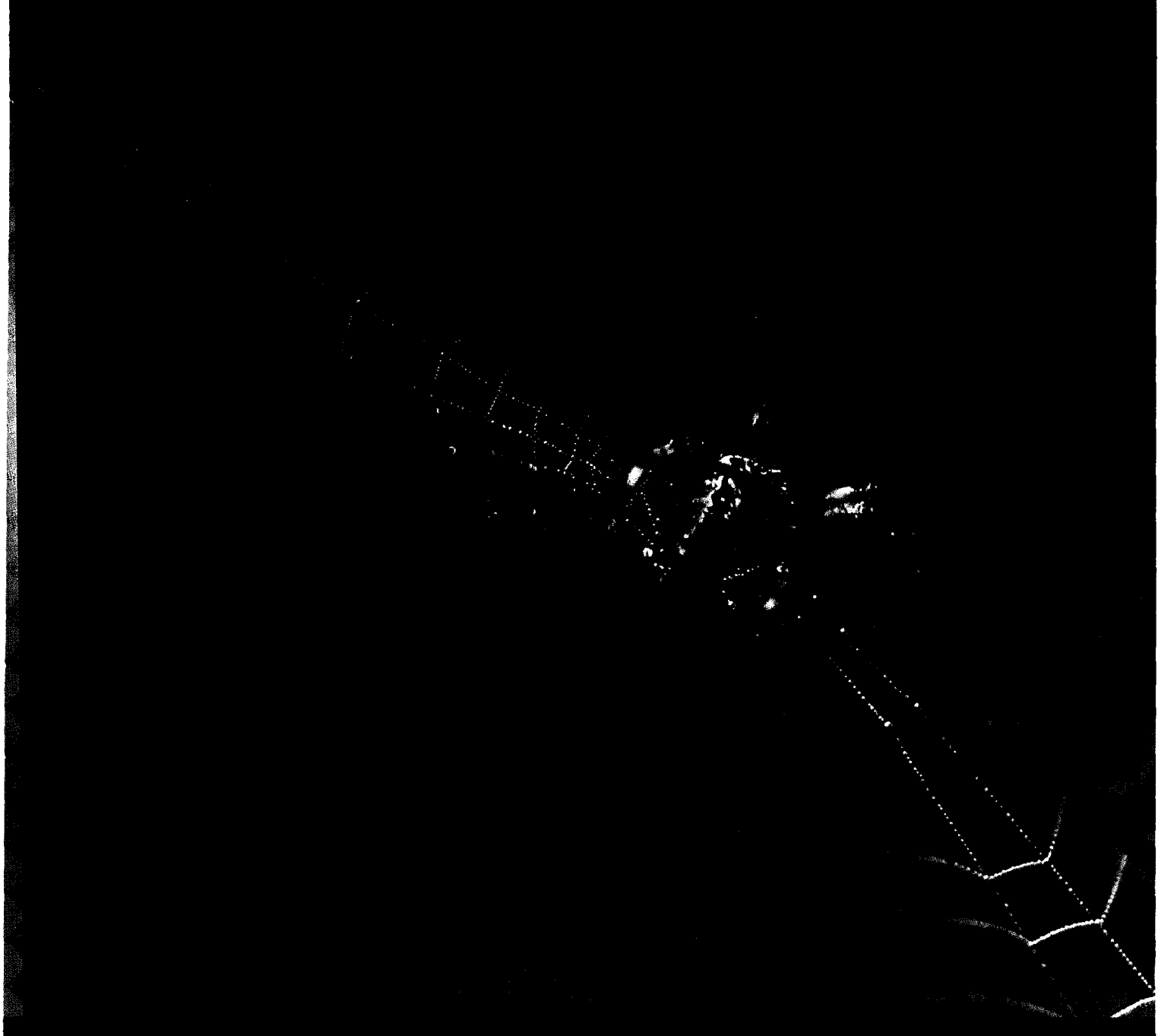
UNDERNEATH ITS COLD, WICKED EXTERIOR LIES THE HEART OF A PRUDENT ENGINEER.



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LETTERS

Rumors

I was taken aback by *NR*'s attack on my integrity ["The Week," April 6]. For the record, there is no race for Speaker of the House. As I have said countless times, I support Newt Gingrich to be Speaker today, tomorrow, and beyond. (You might remember that I was the person who led the effort to put down last July's attempted coup against the Speaker.) My loyalty to Newt is not in question. However, if, and only if, Newt Gingrich steps down, I have stated my intention to run for that office.

As to the "rumor" that I have cut a deal with my good friend Rep. Jerry Lewis, I tell you what I told the press, colleagues who are supporting me, and Rep. Lewis himself: I have not and will not promise anyone anything in return for votes. In fact, recently I probably lost a few sure votes simply because I refused to make deals with certain Republican members who were anxious to attach items to the Supplemental Appropriations Bill. Of course, you would have known that had your reporter taken the time to call me.

As for my record as chairman of the Appropriations Committee, you might note that since I became chairman in 1995, we have saved the American taxpayer $120 billion that President Clinton proposed in spending and eliminated more than three hundred government programs. In fact, discretionary spending is down for the first time in 36 years. Even with the increased domestic spending agreed to by the leadership, the Budget Committee, and the President (I had nothing to do with those negotiations) in last year's balanced budget, we still spent a full one billion less than the last Democratic Congress in 1994.

Finally, writing that "There are better places for Livingston's famed 'Cajun Scalpel' than Dick Armey's back," is simply outrageous. Since when is competing for office, if that office becomes vacant, stabbing someone in the back? I believe that one of the most important positions in our constitutional democracy should not be "inherited." As with any other important office, it should be competed for—and may the best man win. That was a cheap shot. I expect better from NATIONAL REVIEW.

Rep. Robert L. Livingston
Washington, D.C.

Chairman Livingston is right. He denied the rumor and we should have made note of that. —*Ed.*

The End Is Not Near

Regarding Curt Smith's lamentation for the decline of baseball ["The Old Ballgame," April 6]—it's just not so! Through youth baseball programs, more kids are playing baseball than ever before. More high schools are playing the game and college baseball has really taken off (the aluminum bat saved these programs by making play affordable).

There is a falling off of hardball play at the post-high-school and post-college years. But tilling that niche has been the phenomenal growth of softball, which enables ballplayers to continue in the game into their eighties and has also opened the game up to girls.

People might not be watching baseball on the tube . . . or they might not going to Major League games in droves (although attendance is not bad), but that's because people are playing the game. It's a good trade-off and one that certainly supports the thought that baseball is flourishing more than ever.

Fred Heinlen
Cleveland, Ohio

Counting Catholic Irishmen

You recently referred to Northern Ireland being "one-third Catholic and [therefore?] two-thirds Protestant ["The Week," April 6]." Why not count the number of registered Protestants, and conclude everyone else is Catholic? If you check with the Irish Consulate in Manhattan, you will find an official poll in the northern six counties shows 43 per cent register as Catholics and 47 per cent as Protestants. Catholic families are consistently larger, and the "majority" has held onto power by denying a fair share of employment to Catholics, to force them to emigrate.

Official figures show that more than 28 per cent of Catholics are unemployed, but only 12 per cent of non-Catholics are unemployed. Even so, there will soon be more Catholics than Protestants in the North. Polls also show the majority in England want to cut loose from Northern Ireland, which costs them several billion pounds a year, and alienates Catholics and others everywhere.

Dan Lyons
Bloomsbury, N.J.

Mr. Lyons is not taking into account—and we too readily glossed over—the distinctions between religious, cultural, and political affiliation. Thus, the most recent figures for religious affiliation in Northern Ireland show that 43 per cent of people describe themselves as Protestants and 38 per cent as Catholics. That leaves 20 per cent (other, none, and "refused to say") who, whatever the state of their souls, almost certainly identify with one community over the other. If they split 12 to 8 to the "Protestants"—a reasonable assumption—then cultural Protestants would enjoy a demographic lead of ten points (55 to 45 per cent) over cultural Catholics. But the election returns consistently show an even larger disparity. Parties favoring Northern Ireland's union with Britain typically receive 58 to 60 per cent of the total N.I. vote, and parties favoring Irish unity 40 to 42 per cent. The main reason for this is that about a third of Catholics prefer union with Britain to a united Ireland. Indeed, a recent poll in the Belfast Telegraph showed exactly 33 per cent of Catholics supporting unionism. With mature defections at that rate, relying on a higher Catholic birthrate to deliver Ulster to the Irish Republic will take an awfully long time. —*Ed.*

Riding in Style

In an excellent and informative snippet about public-school busing ["The Week," April 6], the figure $2 million per day to bus students is given. I don't do new math, but old math yields the number $144.93 per day per student. Is this possible? What about taxis, jitneys, etc. as an alternative? What bunch of ossified loonies we have become if we allow this to continue.

Michael J. Maloney
Seattle, Wash.

The "Voluntary Interdistrict Transfer Plan" reimburses suburban districts willing to accept St. Louis public-school children for tuition, staff, and capital improvements as well as busing. Think of it this way: part of the $2 million is for transportation, the other part, to promote the delusion that the program is voluntary. —*Ed.*

Scandalous Behavior

Another issue of *NR*, another "Scandal File." I used to think that the British Royal Family was the only institution whose central role was to be the focus of scandal. Until a short while ago, I would never have believed that a democracy could be as vulgar as a monarchy. Live and learn.

George Jochnowitz
Staten Island, N.Y.

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FIXING HEALTH CARE ISN'T EXACTLY BRAIN SURGERY. (IF ONLY IT WERE THAT EASY.)

About the only aspect of the health care debate any two people might agree on is that the system needs work. We'd like to weigh in with a few ideas of our own since we're actually in the position to do something about it. ▪ First off, the paramount focus of health care must be quality. Which is why we're working to enable a level of health care never available under the old fee-for-service system. ▪ We can't do it alone. So we're joining with academic medicine to make the system better. We've pioneered and allocated $15 million to fund the Academic Medicine and Managed Care Forum. An ongoing gathering of our experts, and those from more than 30 leading universities and teaching hospitals. Including Johns Hopkins, Yale, Emory, Baylor, University of Pennsylvania and Stanford. Together, we're seeking new ways to help get patients the health care they need. ▪ Already, we send timely reminders that encourage members to see their doctors for immunizations to prevent illness and screenings that diagnose disease early enough to do something about it. One result has been a significant reduction in late-stage breast cancer. ▪ To better manage chronic diseases, we've created outreach efforts that have reduced asthma emergencies 60%, promoted eyesight-saving laser therapy for diabetics, and improved the quality of life for people with congestive heart failure. ▪ There's more work to be done. And we'll do more than our share of it. Because no matter how complex, it has never been our policy to turn our back on a problem. Whether it's that of a patient, or of an entire health care system.

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FROM THE EDITOR

Only a Game?

IT HAPPENS every spring—columnists and editorialists trot out cliché-filled paeans to (or laments for) baseball. My former status as a reporter kept me from indulging in this sort of thing. But now, dear reader, it is, as Ted Williams put it, *My Turn at Bat*.

First, the clichés: *The DH is a travesty; the owners are ruining the game; good pitching beats good hitting; it's a game of inches; take it one game at a time; give 110 per cent; etc., etc.*

Herewith, the self-indulgent reflection: Elsewhere in this issue Stephen Moore takes on the suburban blight of little-league soccer. My own attitude toward that game was formed when I myself was a soccer brat. I remember two things about the experience: 1) playing one glorious game in a mud-bath of a field after a rainstorm; 2) the mild derision that my uniform met with from my father.

From the latter, I would take away an important life lesson: real sports aren't played in short white pants. It's a rule that has kept me from ever trying to take up track, table tennis, or—most importantly—gymnastics. Meanwhile, my view of soccer as a less-than-manly sport has been challenged only once, when after living in a dorm with two varsity soccer players I realized they were as drunken, lecherous, and dumb as any other jocks.

No, my sport is baseball, and here it is, spring again (*it happens every spring, the crack of the bat, let's play two, etc., etc.*). For me, this means agonizing days and nights listening to my beloved New York Yankees, rooting for victory lest my spirits be plunged into the blackest despair. Believe me, I know this is irrational, and—in a sport where a good team will lose sixty or seventy games a year—damned inconvenient to boot.

But I can't help it, which raises a question for the die-hard fan of any sport: Why do we care?

In his fictionalized memoir *A Fan's Notes* Frederick Exley paints some vivid portraits of sports fanaticism. In one scene, at a New York Giants game, Exley sits next to an unsuspecting family who get progressively more concerned about his out-of-control rooting. Finally, it's clear the Giants will lose, and Exley is sobbing. The father of the family turns to Exley, "'Look here, it's *only* a game.'" Only a game? "Trying to speak softly so the children wouldn't hear, I said, '*F--- you*.'"

Such are the perils of sitting next to a fan literally on the verge of a nervous breakdown. To be sure, Exley's rooting is tinged with lunacy. But so, in a way, is everyone else's, a product of atavistic urges.

Bill Buford began *Among the Thugs*—his brilliant book about English soccer violence—in the belief that soccer thugs are driven to criminal behavior by their economic alienation. A lot of liquor, smashed noses, and broken bottles later, he comes to an entirely different conclusion: they just like violence.

So much for economic man. Near the end of the book, Buford watches British fans battle with police on the occasion of a match in Italy:

> . . . these fools, despised at home, ridiculed in the press, incapable of being contained by any act of impulsive legislation that the government had devised, wanted an England to defend. They didn't want Europe; they didn't understand Europe and didn't want to. They wanted a war. They wanted a nation to belong to and fight for, even if the fight was the absurd piece of street theater with the local Italian police.

Now, the average British soccer thug could crush me like a can of lager, but I —and I think any serious fan would—have at least an inkling of what he feels. There is an ineluctable urge in all of us that makes us want to belong to something, and love it, and be willing—given the right circumstances and enough alcohol—to fight for it.

That's why you will never eliminate war, or even gangs, or even fights in the bleachers. And why socialism will never work, and neither will the Euro, and why *Brooklyn has never been the same since the Dodgers left.* —RICHARD LOWRY

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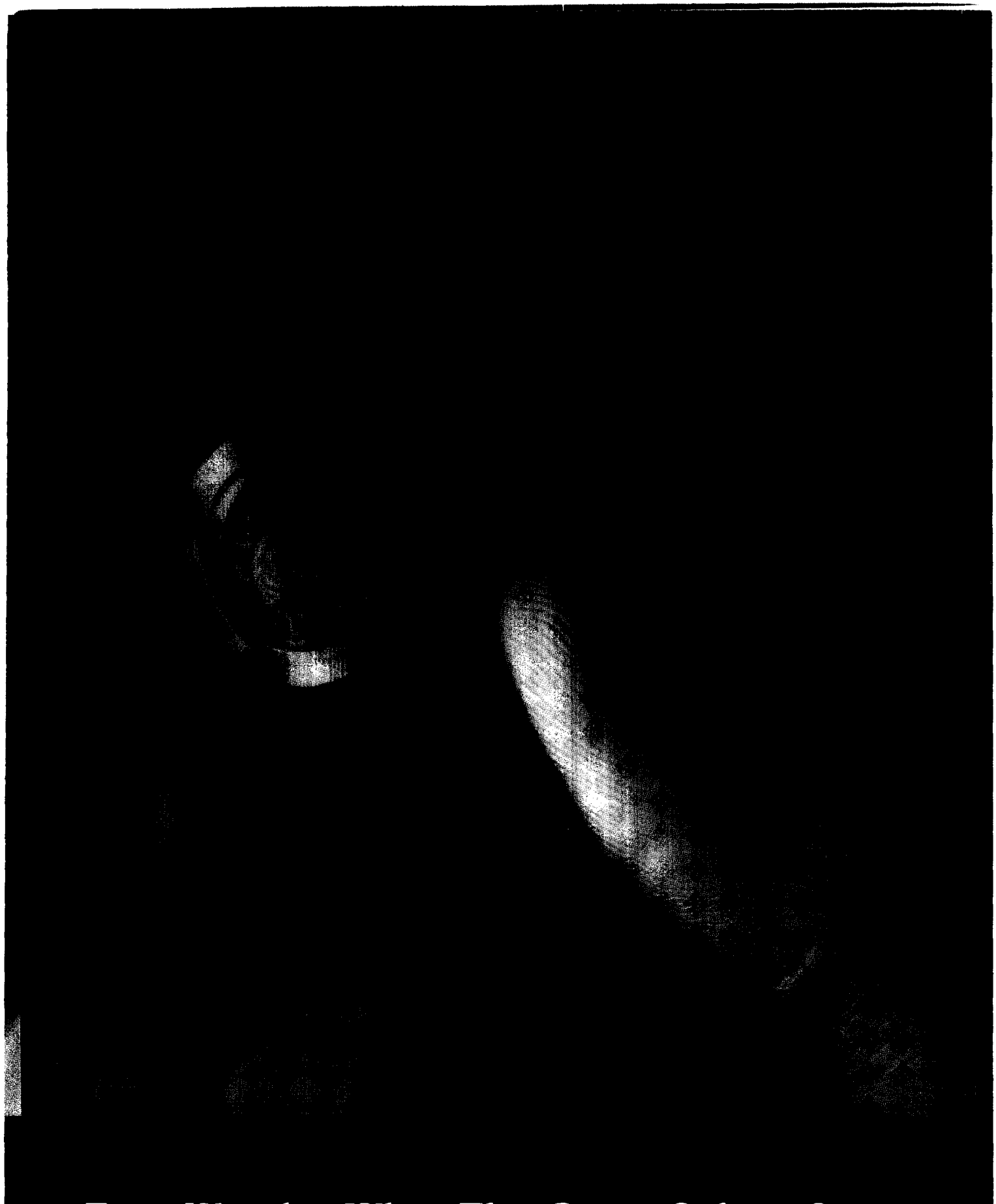

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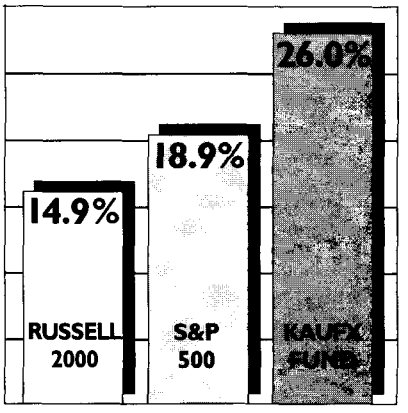

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FOR THE RECORD

■ Pages in Iowa State Senate cause minor flap by removing President **Clinton**'s portrait from background of annual group photo. "He's not the best role model for young people," says one teenager. . . . **Dick Morris** on Clinton: "I think he's going to emerge from this period of mobilization with a period of listlessness, of apathy, of [clinical] depression." . . . **Patricia Ireland** of National Organization for Women says: "He knows he has to respect people like **Hillary**, [Secretary of Health and Human Services] **Donna Shalala,** and [Supreme Court Justice] **Ruth Bader Ginsburg**. But other women can be used like Kleenex. He is not my dream man." . . . Retirement of Energy Secretary **Federico Peña** fuels speculation of further departures from Clinton Administration. . . . **Ken Starr** will clear FBI Filegate poster boy **Craig Livingstone**, writes *Boston Globe*. . . . Newly elected Rep. **Mary Bono** (R., Calif.) is expected to win late husband **Sonny**'s spot on House Judiciary Committee, becoming only GOP woman on the panel that is likely to consider Starr report. . . . *60 Minutes* prepares attack piece on Starr for "overzealous tactics," reports *Arkansas Democrat-Gazette*. . . . **Sam Donaldson** irritated reporters on Africa trip when his "bellowing scared away some elephants" that cameramen were hoping to shoot with Clinton in Botswana photo-op, says *U.S. News & World Report*.

■ CBS News poll: 25 per cent of registered Republicans prefer Texas Gov. **George W. Bush** for 2000 GOP nomination. Second-place finisher: **Elizabeth Dole**, with 13 per cent. No other candidate breaks into double digits. . . . *Des Moines Register* poll of GOP caucus-goers in Iowa: **Dan Quayle** edges Bush, 20 per cent to 18. . . . San Antonio emerges as front-runner in bid to capture 2000 Republican National Convention. . . . Sen. **Paul Wellstone** (D., Minn.) forms exploratory committee for presidential race. . . . His name is a campaign slogan: Wyoming State Sen. **Keith Goodenough** (D.) prepares to run for governor. . . . TV stations in Detroit, Houston, Jacksonville, Miami, Orlando, and San Antonio will offer free air time to candidates this fall. . . . **Bob Dole** blames direct mail company for mistake in his recent fundraising letter for WWII memorial: "When Pearl Harbor was attacked on December 7, 1941, I was just a boy of eight." He was wounded in battle four years later.

■ **Mary Lazich** captures seat in Wisconsin State Senate, giving GOP control of majority of state legislative chambers. . . . Maine Gov. **Angus King** (I.) vetoes bill to boost state minimum wage. . . . Gov. **George Voinovich**, running for Senate in fall, seeks one-cent increase in Ohio sales tax to raise $1.1 billion and comply with State Supreme Court order on school funding. . . . Hawaii to spend $3.3 million of state money on Miss Universe pageant. Decision earns Gov. **Ben Cayetano** (D.) a hug from last year's winner. . . . Florida legislature considers naming state turnpike after **Ronald Reagan**. But will it also lift the tolls? . . . Alabama legislature rejects proposal to increase state cigarette tax. . . . Congress expected to approve bill allowing school choice for children in Washington, D.C. . . . American Conservative Union rates 1997 Congress, finds both parties in Senate becoming more liberal. In House, Republicans more liberal, Democrats more conservative than previous year. . . . CBS News poll: Democrats more likely than Republicans to believe in extraterrestrial intelligence.

Matt-Rothco

■ Federal judge in Chicago rules that 5,000 white men rejected for employment as Illinois state troopers because of racial preferences must have new chance to join force. . . . **Sean Lennon**, 22-year-old son of Beatle **John**, says U.S. Government killed his father. . . . Study says 54 per cent of students entering California State University system require remedial math. . . . Computer errors leave Los Angeles County public pension fund short $1.2 billion. . . . Software experts cashing in on "Year 2000" computer problem.

■ Philippines seek return of the Bells of Balangiga, captured by U.S. troops in Spanish–American War and now displayed in Wyoming war memorial. Clinton urges compromise, local pols vow a fight. . . . Cuba restores diplomatic relations with Dominican Republic after forty-year split. . . . New document suggests that KGB bugged the Vatican during 1980s. . . . **Lenin**'s embalmed body remains on display in Red Square. Russia rejects proposal to send corpse on world tour to raise cash. . . . **Hearst** Corp. wins license to publish tame version of *Cosmopolitan* in China. . . . **Emily Schindler**, widow of German businessman who saved lives of Jewish workers, receives 24-hour police protection in Argentina following anti-Semitic death threats. . . . Tiny republic of Ingushetia calls on Russian President **Boris Yeltsin** to stop federal officials from investigating "wifenapping," an old Caucasian tradition still practiced by men lacking bride-price. . . . Traffic lights in Afghanistan capital, Kabul, work for first time in six years. . . . Mayor of Bangkok, Thailand, falls through open manhole en route to wreath-laying ceremony.

■ In response to public criticism, Internal Revenue Service promises to be more helpful. Witness recent IRS letter, which informs recipient: "Based on the information shown on your form SS-4, you must file the following form(s) by . . . 3-15-1998." The form letter arrived on March 17. No problem: "If the due date has passed please complete the form and send it to us by 2-11-1998." Is it deductible?

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THE WEEK

■ President Clinton receiving Communion—all the more reason for the Church not to have women priests.

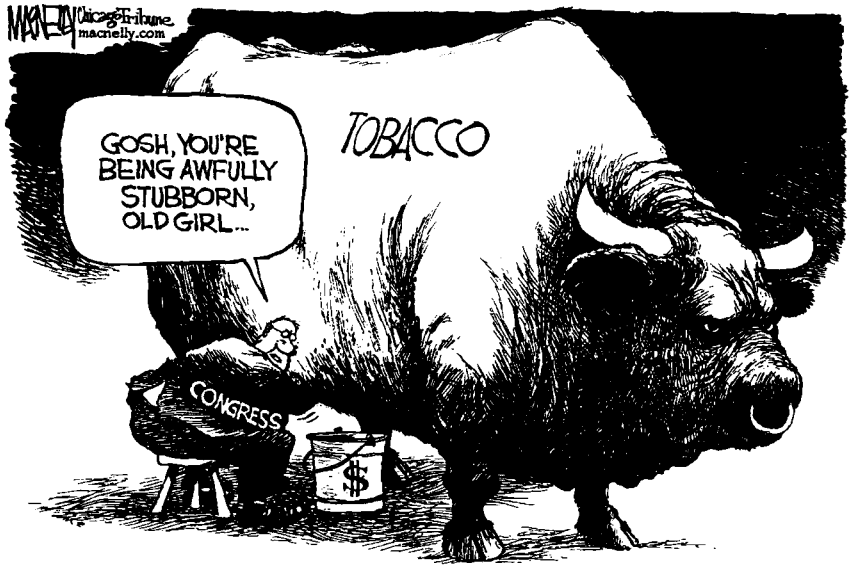
■ "Here we stand; we can do no other." Thus, in effect, said the Clinton Administration to John Cardinal O'Connor during the furor over the President's reception of Holy Communion. After the cardinal clarified the Church's understanding of the sacrament, White House spokesman Mike McCurry snippily said that the cardinal "might not be familiar" with the Southern African bishops' "doctrinal attitude toward the Holy Eucharist." As it happens, the relevant document produced by the Southern African bishops' conference, entirely orthodox, bears the cardinal out. Not only must the communicant be free from serious sin, but he must also share the Catholic understanding of the Real Presence of Christ in the Eucharist. In fact, the bishops' overtures were aimed at Anglican relatives of Roman Catholics, not at Southern Baptist Presidents dropping by for some empathy.

■ After liberals had failed to persuade Americans that there was a health-care crisis justifying a dramatic overhaul of the system, they decided to create a crisis by crippling the existing system. At first glance, it looks as if Republicans are trying a similar tactic in their push to sunset the tax code: attempting to force action on sweeping tax reform by offering chaos as the alternative. Were the threat credible, the effect would be to increase the instability of the financial markets and make it harder for economic actors to make long-term plans—i.e., it would undermine the very goals of reform. And a Congress acting under the pressure of a hard deadline (in one proposal, the end of 2001) might well pass a code even worse than the current one. President Clinton, then, would be right to condemn the current bills as irresponsible. Except that no Congress can bind a future Congress, and the deadline could be delayed ad infinitum. The reformers are bluffing, and "tax-code termination" is just one more way for Republicans to talk grandly about tax reform rather than actually improve the code.

■ The Democratic Party is unsure what to do about Social Security, and so the American Association of Retired Persons and the Concord Coalition, representing the party's left and right wings, are holding a series of forums. On the Kansas City stop, President Clinton came down squarely in the middle: "relatively modest changes" are necessary to keep the Social Security trust fund in the black after 2029. Since that fund is an accounting fiction, the real crunch may come as early as 2008. And even if higher-than-expected economic growth pushes back the day of reckoning, Social Security will remain a rotten deal for young workers. The lesson from K.C.: the President is not yet ready to deal honestly with entitlements.

■ Sen. Barbara Boxer (D., Calif.) and Rep. Nancy Johnson (R., Conn.) have an idea for health-care reform—and, amazingly, it's a good one. The heart of the problem is the tax code's bias toward employer-provided health insurance. A way out is to offer a tax break available equally to employers and to individuals. Sen. Boxer's and Rep. Johnson's bills take big steps in this direction. Rep. Bill Archer (R., Tex.), head of the House tax-writing committee, has said that any cigarette-tax hikes should be offset by tax cuts for health care. If he works with Sen. Boxer, for once bipartisanship may not come at the taxpayers' expense.

■ The Justice Department has been slow to move against President Clinton and his associates, but just watch it pounce on their enemies. In its investigation of doings in Arkansas, *The American Spectator* paid one Parker Dozhier, the proprietor of a Hot Springs bait shop, to run errands and monitor local newspaper accounts. Now his ex-girlfriend, Caryn Mann—a tarot-card reader and psychic who claims to know the whereabouts of Jimmy Hoffa and to have telepathically directed troop movements during Operation Desert Storm—has become a heroine to Clintonites. She alleges that her teenaged son saw Dozhier pass money to key Whitewater witness David Hale. Thus his testimony is supposedly tainted. Hale, Dozhier, and the *Spectator* deny the charges. But even were they true, the payments came long after Hale had given his information about Clinton to the FBI and the media. Deputy Attorney General Eric Holder has nonetheless found Miss Mann's uncorroborated story worthy of investigation.



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(One had already begun, not by U.S. Attorney Paula Casey, as we mistakenly reported last issue, but by Arkansas's other U.S. Attorney, P. K. Holmes.) Holder referred the allegation to Ken Starr—properly, under current law, but at the same time said Starr's indirect association with former *Spectator* funder Richard Scaife could create a "conflict of interest." The Justice Department, in short, has given credibility to a weak accusation while undercutting Starr. Not a bad day's work.

■ University of California officials, still steamed about the repeal of racial preferences in their state, issued a press release reporting that, as a result of the repeal, fewer black and Hispanic students will be a part of next fall's freshman class. The media focused heavily on the dramatic figures from Berkeley, where black and Hispanic admissions went down 57 and 40 per cent, respectively. Throughout the entire eight-school UC system, however, black and Hispanic enrollments are off by only 18 and 7 per cent. So although black and Hispanic students may not enter Berkeley in the same numbers as before, they will still be attending good schools—and ones for which they are academically better suited. The dropout rate for minorities, then, should decline. But don't expect any press releases about *that*.

■ The Pentagon recently reported that discharges of homosexuals from the armed services had increased by 67 per cent since 1994, when the "Don't Ask, Don't Tell" policy was implemented. Gay-rights groups immediately seized on the statistics as evidence of witch-hunts. For its part, the Pentagon maintains that many GIs were using Don't Ask, Don't Tell just to get out of their service commitment. Whatever the case, Don't Ask, Don't Tell looks more and more unsustainable. The prohibition on homosexuals in the military was not directed against gays themselves. It was directed against homosexual activity and homosexual culture—both of which are damaging to the cohesion and martial culture of the armed forces, and neither of which can be effectively prohibited if avowed gays join them. To pretend otherwise merely makes more work for the lawyers and less for our enemies.

■ Navy Secretary John Dalton has blocked a recommended promotion for Lt. Patrick J. Burns, who as a flight instructor released the training records of two female pilots after his superiors ignored his worries about their proficiency. One of the pilots, Lt. Kara Hultgreen, died in an accident attributed to pilot error. (The other woman later washed out of the F-14 program.) Burns has said, "I . . . specifically told individuals that I expected a catastrophic mishap to take place concerning one of these individuals sometime during their fleet tour." The records revealed that extraordinary concessions had been made to qualify the two women as carrier pilots. In censuring Burns, Secretary Dalton found him in violation of the Privacy Act. (The Pentagon's release of information to *The New Yorker* from Linda Tripp's personnel file was apparently another matter.) Lt. Burns was only trying to put lives above political considerations. He's clearly unsuited for John Dalton's Navy.

■ When Gary Bauer of the Family Research Council delivered a speech on foreign policy at Harvard, he was not just advancing his presidential campaign; he was searching for a post–Cold War doctrine congenial to the Religious Right. As befits a political moralist, Mr. Bauer argued that U.S. foreign policy must reflect the moral idealism of the American people, not the interests of American business; that it should be interventionist, promoting democracy and human rights across the globe; and that a narrowly conceived (read: Kissingerian) realism is a poor guide to policy. Mr. Bauer's basic position—rejecting both isolationism and one-worldism in favor of a policy simultaneously pro-American and internationalist—is one we can heartily endorse. But he offers no principles that might limit American intervention abroad. And what should the U.S. do when democracy and human rights clash with an American interest? Democracy, for instance, would probably install anti-American (and fiercely anti-Israeli) governments throughout the Middle East. Morality in foreign policy is not a wholly simple matter, nor realism a wholly amoral one. Security and prosperity are moral goods, too, after all.

■ Some months ago, Saddam Hussein and a group of sympathetic UN Security Council members invited an independent team of technical experts from 13 nations to evaluate the inspections performed by the official UN arms inspectors (the so-called UNSCOM). The goal, clearly, was to cast doubt on the impartiality of UNSCOM, which for seven years has had the nasty habit of catching Iraq in violation after violation of its disarmament obligations. Lo and behold, the independent "technical evaluation" team reported on April 9 that Iraq is still concealing biological weapons (BW) technology, that it has never given a full accounting of missiles that could be used for BW attacks, that it lied about its biological research programs, that it did not cooperate in good faith with inspectors, etc., etc. These technical experts, and UNSCOM, should get the Nobel Peace Prize for their courage in resisting the growing political pressures to let Saddam off the hook. Let us now praise honest men—and stand up to a dishonest one.

■ The argument against civil disobedience in a republic is that the aggrieved have other means of seeking redress. But what happens when, as with blacks in much of the South in the Jim Crow era, there is no practical right to vote? The Rev. Martin Luther King Jr., who was killed thirty years ago this month, faced this problem with firmness, charity, and grace. His legacy, like that of many great men, is mixed. His methods got applied to anything at all; rising expectations led to violence; by the end of his life, he had racialized policy disputes (e.g., on Vietnam). He was imprudent in his behavior and his choice of advi-

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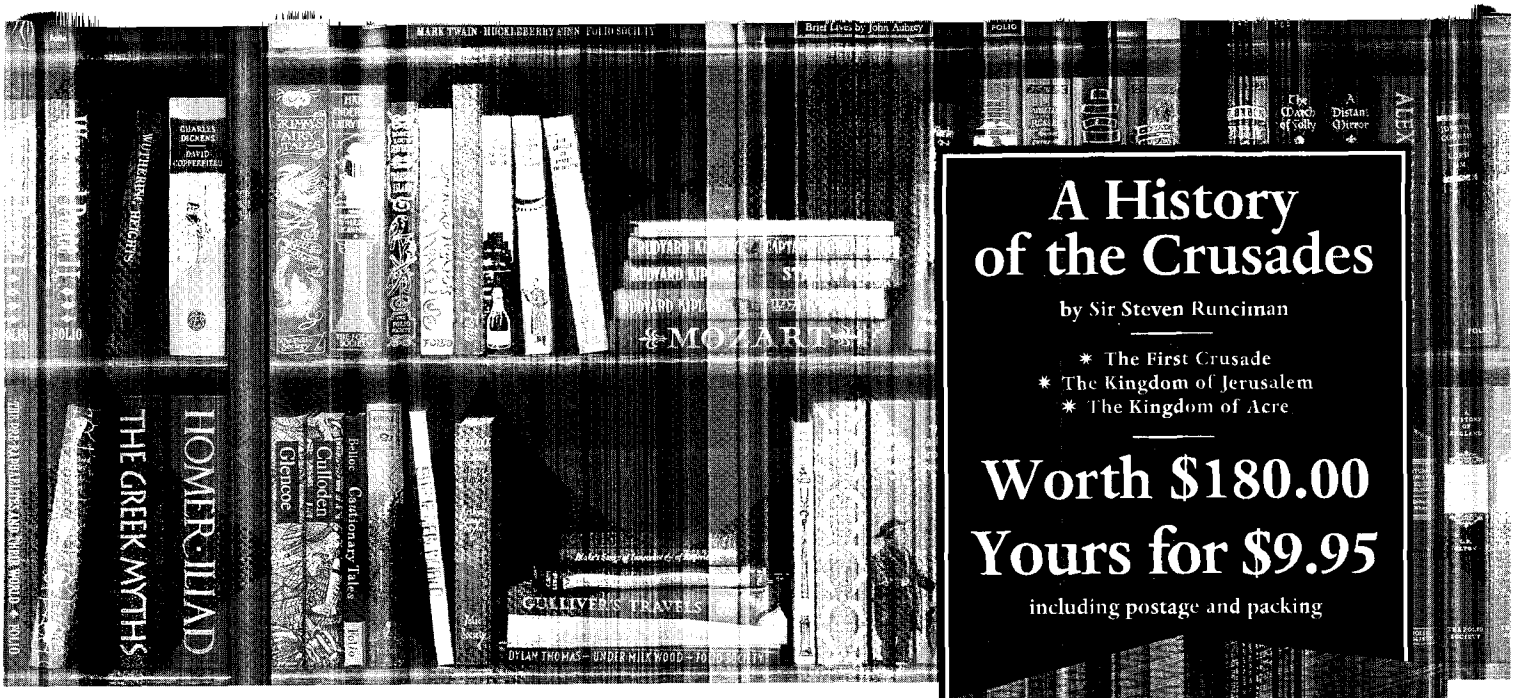

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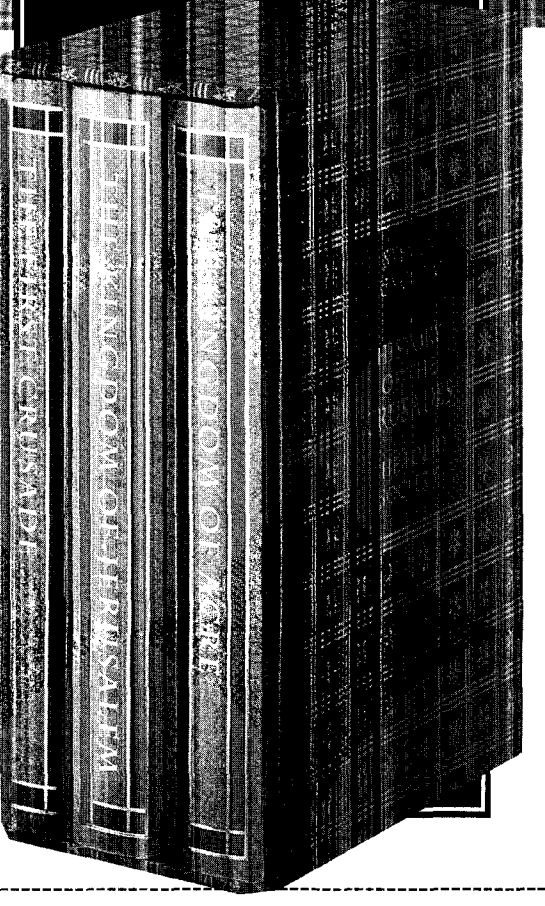

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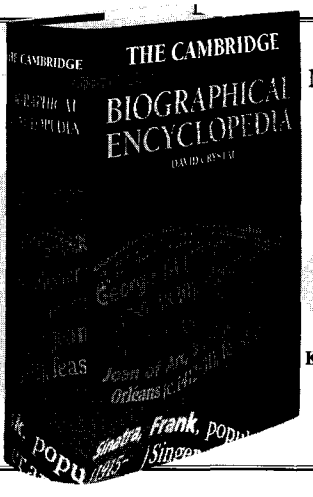

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sors. But the only reason these failings remain in the memory is that he did something worth remembering.

■ The baby-boomers were the crew that felt they knew and could do everything when they were young. They aren't young any more, but that hasn't deterred the American Academy of Anti-Aging Medicine, a group of boomer doctors who tout treatments, such as injections of human growth hormone (hGH), for the disease known as life. One satisfied self-medicator boasts that, after a few years of shooting up hGH, he can "sit down and eat French fries and dessert like I was in my twenties without inflating my love handles." Yes, those pigouts are fun—when you are actually in your twenties. Then you grow older and (you hope) grow up. The youth docs, at one end, and the death docs like Dr. Kevorkian, at the other, are making a pincer movement on the great swath of normal life that is beyond our control: the terrain once governed by luck, or fate. Or grace.

■ Harvard has appointed two women in sensible shoes as the new co-masters of Lowell House, one of the college's 12 undergraduate dorms. The lesbians said they thought they were chosen "because of who we are, not in spite of it." Which is exactly the problem. (If you want to find out who's wearing the pants at Harvard these days, try the president's office at 617-495-1501.)

■ Said a dour Irish Republican in a Bronx bar when the Northern Ireland deal came through: it might not work, since "there hasn't been a fair vote in Northern Ireland in eight hundred years."

■ Cut to A.D. 1198 : BBC Worldes Newes reports that the Norman precincts, as expected, are voting solidly for Richard Coeur de Lion, though Saxon turnout has been surprisingly heavy. Richard has been on a tour of the Middle East for many years. Richard's rival and brother, John, with his baronial advisors at his side, said the two royals had run "a good, clean race," and whoever won, "the royal family would work together and move on." In other returns, Saladin, sultan of Egypt, cruised to an easy victory on a promise to "keep Church and State separate" in the Holy Land.

■ Back to our enlightened times: Here in New York City, Mr. Daniele Malpeli has hugged the tree outside his deli (a honey locust, as it happens) and apologized to it for chaining his bicycle to its tender bark. Mr. Malpeli had been arrested under the Ethical Treatment of Trees Law. He is hoping that his contrition will get him out of a hefty fine, and he professes a true change of heart. "To tell you the truth," Mr. Malpeli relates, "the whole thing has made me closer to the tree. We've made it through a difficult time and now we have a better relationship."

■ Secretary of the Navy John Dalton has announced that the next Seawolf submarine will be named the *USS Jimmy Carter*. Its mission: to float around aimlessly and deter no acts of aggression.

Ken Starr's Collecting

The judge has been collecting things,
Now organized in lots.
Some objects sport a fancy bow;
Some steam like chamber pots.
The catalogue's about complete.
Forget the tickets: it's my treat.

—W. H. von Dreele

Irish Stew

AS THE fine print in the Northern Ireland agreement begins to be studied, the initial euphoria that greeted it begins to evaporate. Early summaries of its complex provisions stressed that each side had given up something and gained something in return. Gerry Adams's Sinn Fein and the constitutional Irish nationalists in John Hume's Social Democratic and Labour Party agreed to the restoration of a power-sharing Assembly in a Northern Ireland still linked to the United Kingdom, and in return David Trimble's Ulster Unionist Party conceded all-Ireland bodies with executive powers. Most observers saw such compromises as justified by the prospect of "lasting peace." Even the deal's reasonable critics argued only that peace had been bought at a high moral price in placing democratic politicians and terrorists on the same plane.

But the central and most contentious questions remain. The executive powers of the North–South bodies, for instance, are left to be determined by the Northern Ireland Assembly, a body likely to contain both Gerry Adams and his unionist counterpart, the Rev. Ian Paisley. These crucial questions are to be decided six months after the twin referenda on the agreement in Northern Ireland and the Republic of Ireland. So voters will be asked to endorse a pig in a poke—a grave weakness when democratic legitimacy is meant to be the shield against the resumption of violence.

Also, the compromises lean heavily in a nationalist direction. All that Sinn Fein, the SDLP, and the Irish government have really conceded is the self-evident fact that Irish unity cannot be achieved in the near future. Sinn Fein has not conceded (although the other two have) that Irish unity can be achieved only with the consent of a Northern majority. All three, moreover, continue to stress that Irish unity remains an inevitable historical development. The provisions amending the Irish

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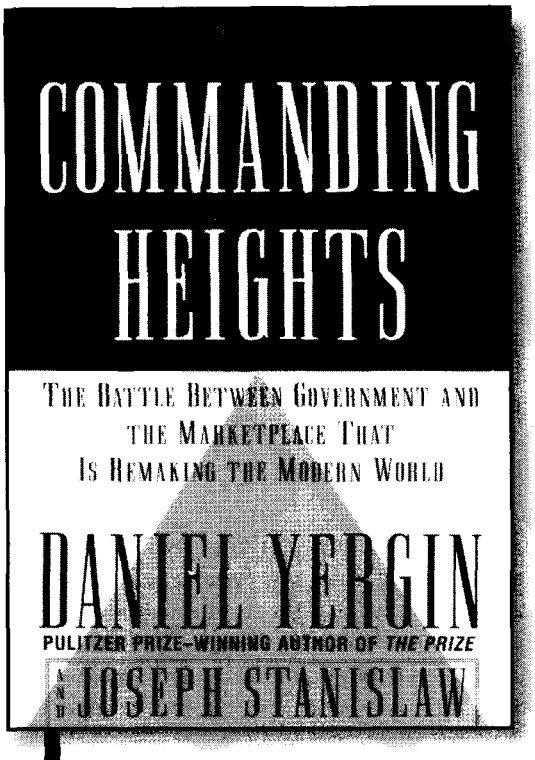

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—Gary Becker, winner of the Nobel Prize for Economics, 1992

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constitution—the concrete "concession" to David Trimble—treat consent almost as a means whereby a united Ireland shall be brought about.

On the other hand, the unionists have conceded not just their aspiration to be governed like the rest of the United Kingdom but also the practical arrangements of how Northern Ireland is to be governed today: all-Ireland bodies exercising some powers over the North; power-sharing rather than normal majority rule in the Assembly; a Sinn Fein member (probably Gerry Adams) in the Northern Ireland Cabinet; and so on.

At this stage, war-weary unionists would probably accept the agreement if it looked likely to preserve the current partial peace. But its security provisions are dubious. Six private armies continue to operate in the province. There is no clear agreement to decommission the Provisional IRA's (or any other group's) stockpile of guns, bombs, plastic explosives, even rocket launchers. It is quite possible, therefore, that such weapons will still be in terrorist hands when, in two years' time, IRA and Protestant paramilitary prisoners—all serving time for serious and often horrifying crimes from knee-capping to mass murder—are due to be released onto the streets. Gerry Adams might become a member of the Northern Ireland Cabinet without the IRA's having surrendered so much as a single baseball bat.

For these reasons a substantial segment of unionist and Protestant opinion will resist the agreement. The political momentum generated by both the initial "peace" euphoria and the involvement of international celebrities such as President Clinton may still ensure that the referendum will pass in Northern Ireland. But a landslide is needed to give full political legitimacy and permanence to so flawed a settlement. And depending on what happens between now and May 22—both Sinn Fein and the Unionists are holding conferences on the settlement—it may pass only barely or, worse, by an unstable majority composed of almost all Catholics plus a minority of Protestants. If public support later collapsed, unionists and nationalists would return to their cold civil war, the IRA and the Protestant paramilitaries to their hot one.

Back to Normalcy

Besmattered and besmirched, but still
More masterly than any shill
Since Fagin scarfed a pocket watch,
The President surveys the botch
Left by the last bouffant gamine;
Then, with insouciance not seen
Since King Kong came on to Fay Wray,
Says, "I'm okay and you're okay."

—W. H. VON DREELE

The only hope of ensuring that the Stormont settlement ultimately succeeds is to keep the promise of the peace process: to halt political violence, by negotiation if possible, by an all-Ireland security crackdown on terrorists if necessary. That may require sacrificing elements in the agreement—halting the release of terrorists, for instance—and risking some parties walking away from it. The alternative is to see the peoples of Northern Ireland walking away from it.

After Paula

IT is good to see the bench agreeing with the editors of NATIONAL REVIEW. In "The Week" (February 9), we wrote that Paula Jones's "civil-rights claim is legally shaky. . . . Take the money and run." In "Bread and Circuses" (April 20), Kate O'Beirne wrote that Mrs. Jones's "legal claim really is weak . . . Bob Bennett is likely to get the last laugh—at least in the courtroom." Days later Judge Susan Webber Wright gave Mr. Bennett an early laugh by dismissing Mrs. Jones's suit.

The law is not the ideal venue for adjudicating social norms, particularly when the law is as dysfunctional as our sexual-harassment law, under which a grease monkey who hangs a dirty calendar is probably a harasser, while a white-collar exec who drops his pants, but only once, is not. We don't make personal judgments by such beyond-the-looking-glass standards, nor do we elect Presidents by them: imagine if Paula Jones rather than Gennifer Flowers had surfaced in February 1992.

These distinctions crumbled like buildings at ground zero when the Clinton team won its legal victory. Even though Judge Wright's decision cast no doubt on the credibility of Mrs. Jones's story, you half expected to see Sidney Blumenthal heading a committee to repeal the two-term limit. Republicans slunk about with their tails between their legs. But then, Republican timorousness is a constant, unrelated to any event-of-the-week.

Dick Armey, showing spunk at a Texas high school, inadvertently demonstrated why the GOP has shown so little. "He's a shameless person," Rep. Armey said of the President. "If it were me that had documented personal conduct along the lines of [his], I would be so filled with shame that I would resign." Many Republicans greeted Armey's blast with silence, fearing both the polls and the possible exposure of their own misdeeds. (Why else did the White House collect those nine hundred FBI files? And who doubts that there is an arsenal of privately collected information as reinforcement?)

Which makes the burden on Kenneth Starr all the heavier. The best thing he could do when he presents his report to the House Judiciary Committee, probably in mid May, is to present it in person, with three or four of his aides flanking him at a witness table. He should take all the spitballs from Barney Frank; walk the committee through the narrative in his mild, Caspar Milquetoast

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way; and most important, show that there *is* a narrative, not a heap of discrete documents and allegations.

Will Kenneth Starr do this? He has never done anything with an eye to presentation; why should he change now? It will be left, then, for Committee Chairman Henry Hyde to explain that he is examining the behavior, not of Congressman X, but of the Chief Executive. And, for those who need reminding, that the standards for that office should be higher.

Smoked Out

THE fact that industries threatened with nationalization or regulatory extinction organize politically to defend themselves has always been a source of uncomprehending outrage on the Left. Such outrage is being expressed now that the tobacco companies have declared their opposition to legislation, sponsored by Sen. John McCain (Bipartisan, Ariz.), that would make the companies an adjunct to a public policy designed to destroy them.

The tobacco companies made a Faustian bargain when they agreed last year to a settlement with state governments. In return for limits on their legal liabilities, they sacrificed their own and others' freedoms—and thus, as Jacob Sullum remarked at the time, "renounced the principles that made it possible to defend them." No wonder, then, that the proposals in Congress have grown ever more punitive and left-wing.

Robert A. Levy outlines many of the gory details elsewhere in this issue, but it is difficult to provide an exhaustive list of the anti-smokers' departures from the rules of law and reason. The McCain bill, for instance, makes it a crime to contribute to the sale of tobacco products overseas to anyone under 18, even in places with lower minimum sales ages. This provision effectively prohibits sales in Germany and Italy, to no apparent end other than hurting American tobacco companies.

The legislation is likely to get worse. Republicans, even Southerners like Newt Gingrich (Ga.) and Mitch McConnell (Ky.), think it imperative to be seen as siding with children rather than Big Tobacco. And they are probably right on the politics: it is a little late to start challenging that absurd, indeed childish, framing of the issue. Few Republicans are willing to defend smoking from the charges that is immoral, irrational, and a public menace. It has been a while, in fact, since they have argued for freedom or limited government on any issue. Expect no serious challenge to the 17 new bureaucracies enshrined in the McCain bill.

At the very least, however, Republicans ought to avoid making 1998 a year of net tax increases—which it will be if they keep to their current plan of only $30 billion in tax cuts while passing McCain's cigarette-tax increase. Raising the price of cigarettes to discourage smoking makes no sense, by the way, on the anti-smoking campaign's own assumption of the irresistible addictiveness of cigarettes. Indeed, it would be a cruel punishment for the afflicted. Nor would the bill's taxes fall solely on smokers. Tobacco revenues will decline if the taxes have their intended effect on smoking. The sundry new programs for which those revenues have been earmarked—for "the children," as usual—will then require funding from general tax revenue.

All indications, then, point to a new front opening in the War on Drugs. Our advice: Find some Latin American cigarette makers, and invest.

Gun Show

ON April 5, President Clinton signed an executive order banning importation of various rifles. The White House called this order a "loophole closer" to an existing ban on the import of assault weapons. Double-talk. The President's action has no real or substantial relation to any conceivable public interest.

The 1994 assault-weapons ban forbade the manufacture or import of "assault weapons." Alas, "assault weapon" is a category unknown to gunsmithery. Hence, Congress decreed that any rifle that had two or more of the following must be classified as an "assault rifle": a bayonet lug, a night-vision scope, a flash suppressor, a grenade launcher, a folding stock, a pistol grip, or a detachable magazine. All these attributes are utterly cosmetic from the point of view of public safety. A pistol grip or a folding stock does not make a rifle with a flash suppressor more dangerous.

So the press came to the shocked realization that cosmetics are after all cosmetics, and getting rid of night-vision scopes and bayonet lugs leaves a rifle just as dangerous as before. "Assault gun ban designed to backfire," trumpeted the shocked *Chicago Tribune* in a four-column, page-one spread. "Crackdown on assault weapons has missed mark," thundered the front-page headline in the shocked *Los Angeles Times*. And the Clinton Ad-

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—W. H. von Dreele

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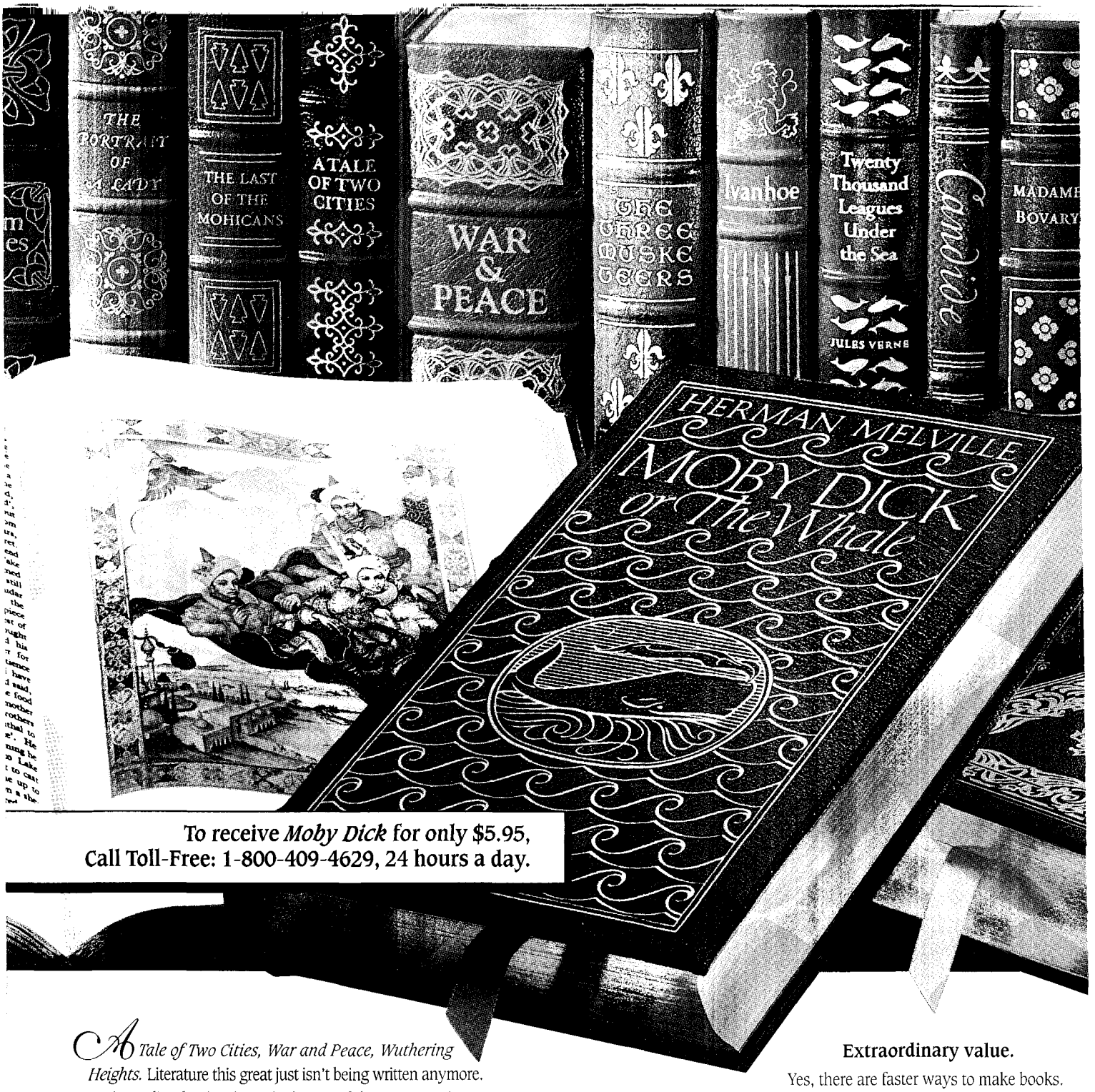

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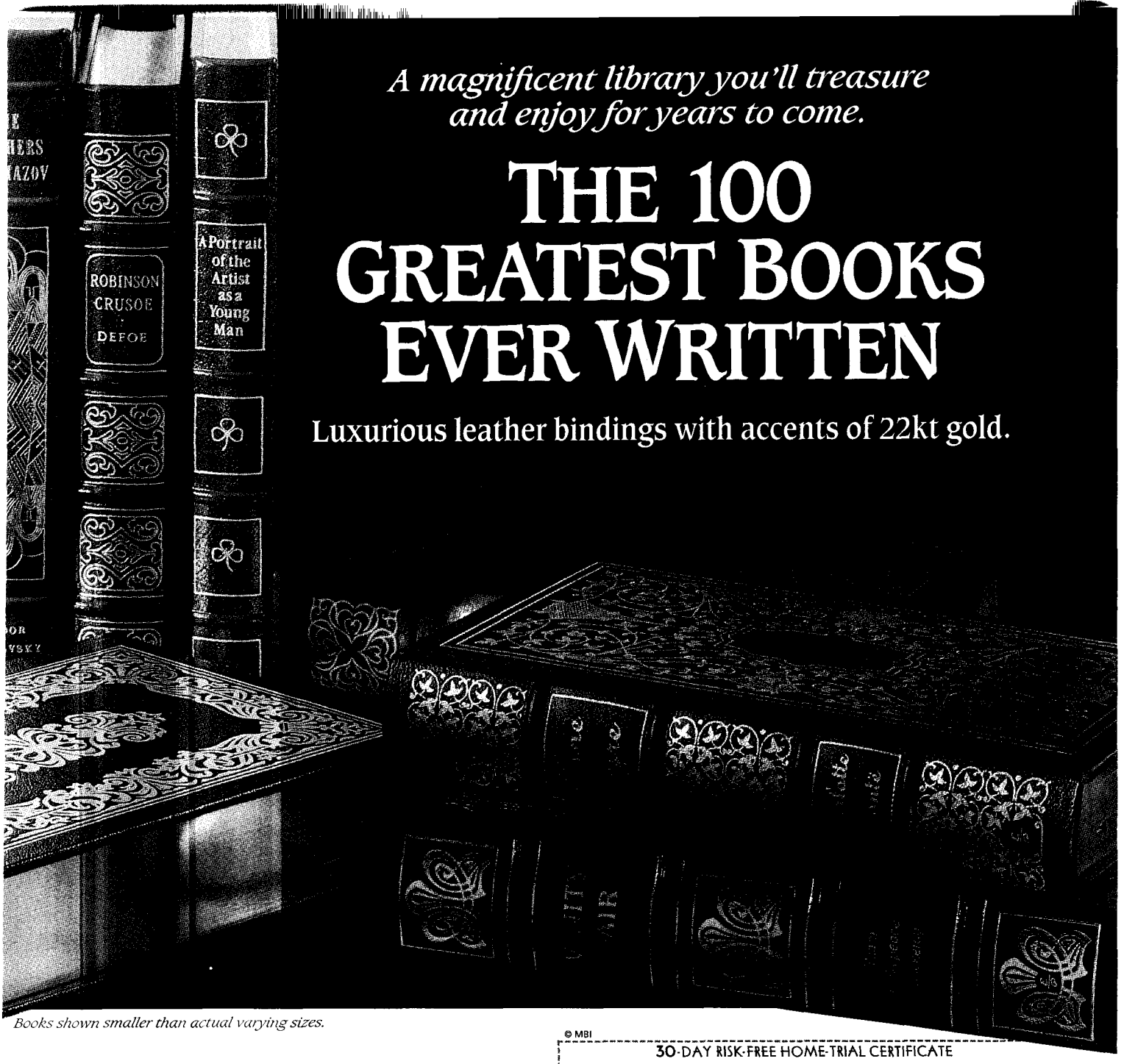

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ministration, following on the Jonesboro massacre, pretended to discover what it had been told at the time—that the assault-weapon ban could not accomplish much. It made one rifle contraband and another perfectly legal on the basis of characteristics that have nothing to do with any defensible legislative purpose. One might as well distinguish the "assault weapons" from the "good" guns by the color of the box they are shipped in or the day of the week they are bought.

The day after the President unveiled his executive order, the *Jerusalem Post* reported that TAAS-Israel Industries, which has sold a quarter-million of its semi-automatic Uzis in the U.S. during the past 25 years but whose product was now, suddenly, contraband, was exploring domestic production of the weapon through an American company. Gun control misfires again.

Green Blues

IN the 104th Congress, Republicans provoked the wrath of Washington's environmental establishment by daring to question a federal regulatory structure that does little to protect the environment but absorbs more than 2 per cent of GDP each year. Since then, the conventional wisdom has been that the GOP should steer clear of environmental issues. And so, the Republican leadership refuses to allow a vote on any significant environmental legislation that lacks strong bipartisan support. Another Earth Day passes, and the Republicans are still without an environmental agenda.

Yet a principled, and potentially popular, alternative to Al Gore's green messianism does exist. Americans care about the environment, but they have no particular fondness for the environmental establishment's embrace of the federal leviathan. Conservatives thus have an opportunity to redefine the issue.

First, Republicans should conquer their fear. They need not plant trees once a year or provide federal aid to mass transit; rather, they should explain that re-limiting the Federal Government will pay environmental dividends. Slashing farm subsidies and corporate welfare would remove taxpayer-financed incentives to pollute. And economic freedom leads to wealth and technological advances that in turn foster environmental progress.

Second, conservatives must explain why the regulatory status quo does not serve the environment. Consider that in more than 25 years the Endangered Species Act has not recovered a single endangered or threatened species. It drives down the land values of endangered-species habitat, thus discouraging conservation.

Finally, conservatives must highlight free-market environmental success stories. State environmental agencies are busy implementing regulatory reform, flexible permitting schemes, and property-rights protections. More significantly, there are countless examples of private citizens acting—for both financial and altruistic reasons—to protect and enhance environmental values where government policies were ineffectual or nonexistent.

Conservatives can teach the public that command-and-control regulation is a poor way to show a healthy regard for the environment, just as they have taught it that welfare is a poor way to express compassion. Or conservatives can continue to stay indoors on Earth Day.

David R. Jones, R I P

BY the time he was 25, Dave Jones had found the cause with which his life and career were to be identified. Born in 1938 of West Virginia forebears, he had trained to be a teacher, and in fact taught for three years in the high schools of Pinellas County, Florida, winning several awards. But he had begun dabbling in Republican politics, and in 1963 he accepted appointment as executive director of Young Americans for Freedom, a post he held until 1968. Moving to Washington, he rapidly became a prominent figure in the burgeoning conservative movement.

In 1968 he joined the Board of Directors of the American Conservative Union, and from 1969 to 1971 he served as national vice chairman of the Young Republican National Federation. In 1970 he was tapped by Clif White, campaign manager for James Buckley's successful Senate race in New York, to be the campaign's director. He quickly became known to New York conservatives as an extraordinarily cool and efficient political operator, and Senator Buckley named him his administrative assistant in Washington.

Jones remained with Buckley until 1974, when—deeming Washington no place to raise a family—he became executive director of the Tennessee Republican Party and then, from 1976 to 1983, vice chancellor for development of Vanderbilt University, raising scores of millions of dollars for the school.

Thereafter Jones shuttled between his home in Nashville and a formidable array of activities in Washington. During the Reagan Administration, Secretary of Education William Bennett appointed him to the board of the Fund for the Improvement of Postsecondary Education, and President Reagan named him chairman of the National Commission on Student Financial Assistance.

But unquestionably the organization closest to his heart was the Charles Edison Memorial Youth Fund, which he, Walter Judd, Bill Buckley, and Marvin Liebman founded in 1968. Jones became the president of its board of trustees in 1974, and CEO of its successor organization, the Fund for American Studies, in 1993. True to his teacherly instincts, he shaped the Fund to advance the causes of freedom, democracy, and a free-market economy by sponsoring academic institutes for college students in partnership with Georgetown University. In 1989 he received Georgetown's Bicentennial Medal for "his gen-

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erosity to [the University] and the students it serves, and his deep and enduring commitment to this nation and the education of its citizens." In recent years he expanded the Fund's activities overseas, searching out bright youngsters to invite to Washington for immersion in American principles and politics.

Jones hugely enjoyed the great game of politics, and politicians of both parties felt at home in his presence. His wit was dry as a martini, his judgments shrewd and balanced, and his loyalty to his friends legendary. I was one of many happy beneficiaries of the latter, even after I moved from New York to San Francisco in 1989. He always found time for lunch with me when he was in the Bay area, arranged for me to speak to the board of the Fund when it met nearby, and phoned early this February to invite me to be his "personal guest" at a meeting to be held at the Reagan Library on February 27. Alas, it was not to be; he fell ill, and could not be there himself.

Dave Jones was only 60 when he died on April 7, after a mercifully short battle with lung cancer. His many friends extend their condolences to his three daughters, and to the conservative movement he served so well.

—WILLIAM A. RUSHER

NOTES & ASIDES

■ To our readers, a clarification:

It often happens in editorial fraternities, has happened to us before, will happen in the future, has happened to us now, to wit:

—In 1996 (issue of April 22) we published an article in which *NR* senior editor Peter Brimelow quoted *Wall Street Journal* editor Robert Bartley to the effect that "the nation-state is finished."

—In our latest issue (April 20, 1998), Mr. Bartley reviews a book (*The Great Betrayal*) by Patrick Buchanan. In Buchanan's book Bartley runs into his quote about the end of the nation-state. He is unhappy about it and says the following: "I am quoted as saying that 'the nation-state is finished.' These words have never appeared in the *Journal*; at most I seem to have let Mr. Buchanan's fellow 'nationalist' Peter Brimelow put this hyperbolic phrase in my mouth. It bears only a passing resemblance to my views."

—It has been put to us that by allowing Mr. Bartley to make such a charge, and even more so by not rejecting it in *NR*'s editorial columns, the magazine has in effect implied its concurrence with an insinuation that Mr. Brimelow misrepresented Mr. Bartley.

Well, this mountain should be encouraged to reduce in size:

1. The editors did not read Mr. Bartley's sentences as imputing intentional misrepresentation to Mr. Brimelow. We read it as the equivalent of, "I must have said something like that but that was not what I meant to say; let me explain."

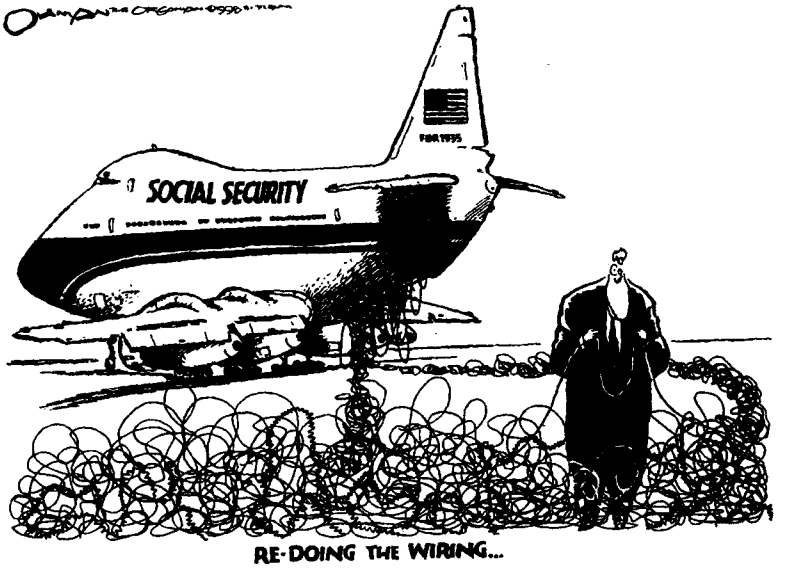
2. NATIONAL REVIEW has not the least suspicion that its esteemed and longtime associate Mr. Brimelow would misrepresent someone's words, and if we had thought Mr. Bartley was alleging intentional misrepresentation, we'd have dissociated ourselves from the accusation.

3. Which leaves us with surviving curiosity on: What is it that Mr. Bartley *does* feel about the nation-state? Well, his ensuing sentence in last week's article read, "[In my view], with no global military threat to call forth huge armies, and with instant communications and 24-hour financial markets precluding an independent monetary policy, the state will play a smaller role in our lives, markets will play a greater one, and this is a good thing."

4. John O'Sullivan, who was editor of *NR* when the original Brimelow piece was published, contributes the following, after reading Mr. Bartley's review: "Fair enough. The original context, however, was that of unstoppable illegal immigration into Europe, whose destiny, Mr. Bartley argued, 'had already been decided in North Africa.' If indeed Mr. Bartley was arguing that the nation-states of Europe are disappearing under waves of migrants from the Maghreb and the threat of a single European currency, then Mr. Brimelow might well agree with him."

5. Whatever the differences in opinion of Messrs. Bartley and Brimelow on the altering viability or character of the nation-state, the differences between the two on immigration policy are entirely outspoken. *NR*'s position is as frequently communicated in its columns, including by immigration expert Brimelow (see *Alien Nation*). Our position is that there is a manifest need for immigration reform, including a reduction in the number of legal immigrants. Cordially,

—WFB



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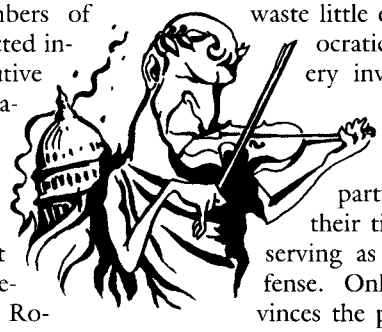
BREAD & CIRCUSES

Hearing Aid

REPUBLICAN leaders will have to make history should Independent Counsel Ken Starr report potentially impeachable offenses by the President, and so a member of the House has been tapped to study some recent history. Speaker Newt Gingrich and Judiciary Committee Chairman Henry Hyde have asked Washington newcomer James Rogan to interview current and former members of Congress who have conducted investigations of the Executive Branch—most of them notable for their failure.



Relying on the most junior member of the Judiciary Committee for this sensitive mission may not sound like the brightest decision, but California's Jim Rogan—with his experience both as a prosecutor and as a partisan fighter—may well be the perfect man for the job.

The former Democrat has a hard-knocks background. He grew up in San Francisco, primarily with his grandparents. His mother was convicted of welfare fraud; his stepfather was an alcoholic. He dropped out of high school, but later worked his way through Berkeley and UCLA law school. After a short stint in private practice, he served for six years as a Los Angeles County Deputy District Attorney.

He also served on the Democratic Central Committee. In fact, witnessing the Democratic Party from the inside helped prompt him to switch to the GOP in 1988. He won a seat in the California Assembly in 1994 and was unanimously elected Majority Floor Leader by his Republican colleagues.

Having served in Sacramento with the legendary Willie Brown, Rogan is not intimidated by Washington's comparatively tame version of partisan fighting. He laughingly reminisces about the mute button that Willie Brown used to cut off the mikes of members with whom he disagreed.

Before it's over, Republicans may wish they had a mute button of their own. The fervid atmosphere of the California legislature might provide the best model for hearings following a Starr report. Republicans who hope that a Howard Baker will step across the aisle should instead be prepared for a caucus of Willie Browns, uninhibited in their willingness to thwart an inquiry.

GOP veterans of past investigations recommend that the Republicans waste little effort courting Democratic cooperation. In every investigation so far of the Clinton Administration, members of the President's party have devoted all their time and resources to serving as counsel for the defense. Only if evidence convinces the public that the President should be held to account can Democrats be expected to engage constructively in an inquiry.

The Republicans' first order of business is to avoid the kinds of mistakes made by their side in the D'Amato, Thompson, Clinger, and Burton committees. None of these committees developed a clear narrative about the alleged wrongdoing under investigation.

One reason: Committee rules permit members to perform in front of the class whether they've done their homework or not. Although frequently unfamiliar with prior depositions, members insisted on posing their own questions during their allotted five minutes. Bursts of unconnected questioning from numerous members contributed to the disjointed quality of the hearings. Committee lawyers need time to examine witnesses without interruption.

Another reason for past failures: Republicans had no communications strategy to match the Democrats' portrayal of them as partisans with flimsy evidence. Thus the public never had a clear understanding of the investigations' rationale (were the Thompson hearings about an out-of-control Democratic National Committee or the "broken" campaign-finance system?).

With the public currently unwilling to contemplate impeachment, leading Republicans want to appear cautious and judicious. (Some of them even want to *be* cautious and judicious.) That means that Henry Hyde alone should be allowed to deal with journalists, who would otherwise fly like heat-seeking missiles to Congressman Bob Barr of Georgia, who was ready to launch an impeachment inquiry last fall.

IF Ken Starr sends a report to Congress, he should be prepared to explain his conclusions to the House Judiciary Committee in open session. Before other witnesses are called to substantiate evidence, Starr and his prosecutors should outline the full report. An explanation of the report's central findings by the individuals responsible for preparing it would permit lawmakers to inform the public as fully and coherently as possible, providing that crucial narrative.

The Starr team's public testimony might also rehabilitate the reputations so casually smeared by the President's defenders. Starr's detractors have benefited from his inability to comment about the conduct of his investigations. Starr may have the most famous driveway in America, but the public knows little about the man who has been so relentlessly accused of leading a maniacal crusade against the President.

In fact, Ken Starr is a temperate, mild-mannered jurist with a reassuring, professional demeanor. Among the criticisms levied by his detractors is that he sings hymns to himself and that, in his high-school years, he polished his shoes nightly.

Meanwhile, his prosecutors too have been accused, while unable to defend themselves, of abusing witnesses and trampling constitutional rights. These competent professionals should be provided the opportunity to explain their methods and defend their conclusions—and they are likely to project the reassuring image of reliable G-men. One of the highlights of the Thompson hearings was when an FBI witness carefully detailed the foreign money flowing to Charlie Trie's accounts.

Ultimately, of course, all this will matter less than the weight of evidence. But Republicans—as James Rogan and all those previous GOP investigators can testify—would be foolish to expect Democrats to spend much time at all focusing on that. —KATE O'BEIRNE

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SCANDAL FILE

Starr Chamber

DAVID KOPEL

THE loud complaints from the Clintonites about the tactics of Independent Counsel Kenneth Starr would be more credible if they had ever worried about abusive federal prosecutors before they found themselves on the wrong end of a subpoena. Instead, for every item in the Administration's long indictment of Starr there is a counterpart in its own policies or in the practices of its own Justice Department.

Consider the broadest complaint of all: Ken Starr is unethical. Specifically, they claim that he violated the American Bar Association's Model Rule 4.2, which has been adopted as law in all fifty states and the District of Columbia and affirmed in several federal court rulings. Under this rule, if a person is represented by a lawyer, other lawyers wishing to talk to the person must contact the lawyer, not the person himself.

Ken Starr appears to have violated this rule, by arranging for a person following his orders (Linda Tripp) to secretly tape a conversation with a perjury suspect, Monica Lewinsky (although it's not clear that Starr knew that Miss Lewinsky had a lawyer). However, in violating it, Mr. Starr was only following the bad example of federal lawyers under the Clinton Administration.

According to the "Reno Regulation" (Code of Federal Regulations, vol. 28, sect. 77.2) federal prosecutors are immune from this rule. They claim as a right the ability to do things that could get any other lawyer disbarred.

The White House has also criticized Mr. Starr for tearing at family values by forcing Miss Lewinsky's mother, Marcia Lewis, to testify against her daughter. But federal courts have recognized no "parent–child" privilege that would bar such testimony. (Minnesota, Idaho, and Massachusetts are the only states that have a parent–child privilege.)

Thus, in a 1997 case, the Department of Justice convinced the Third Circuit Court of Appeals to force a father to testify before a grand jury against his 18-year-old son (*In re Grand Jury*, 103 F.3d 1140). Similarly, 13-year-old Josh Nichols was forced to give grand-jury testimony against his father in the Oklahoma City bombing case. As former special prosecutor Joseph DiGenova points out, compelling family members to testify against one another "is common practice in drug cases."

If President Clinton had genuine privacy scruples, he would endorse the bill introduced by Sen. Patrick Leahy (D., Vt.) to take the first steps toward creating a parent–child privilege in federal courts. President Clinton would also immediately order the Justice Department to stop making people testify against members of their own family. Don't hold your breath.

Then there's the White House's outraged astonishment that Starr would assault the First Amendment by subpoenaing a D.C. bookstore to discover what books Miss Lewinsky bought (in particular, to find evidence that she had bought a book on phone sex, *Vox*, which she allegedly gave to the President).

But why didn't anybody complain when federal prosecutors got David Koresh's book-purchase list from Paladin Books in Boulder, Colorado? Or, last year, when Bill Clinton's Drug Enforcement Agency issued a subpoena to Ronin Publishing, demanding the name of every Arizonan who had bought a book about marijuana cultivation? There probably should be a law to protect the privacy of a person's purchases of books or videotapes, but the Clinton Justice Department has never argued for one.

Mr. Starr is accused as well of abusing his subpoena power by ordering Secret Service agents to testify about crimes they saw the President commit. Compelling such testimony, critics argue, will undermine the confidentiality and trust which are necessary for Secret Service agents to do their job effectively.

That is a serious consideration. But what of the proposal by President Clinton and his Secretary of Health and Human Services, Donna Shalala, to end the doctor–patient privilege? They have urged making all medical records available to the police. No warrant, only curiosity, would be required for a policeman to examine everything you had told a doctor. The Clinton–Shalala plan will become law in 1999 unless Congress acts to prevent it.

In the spirit of that plan, the President should waive the privilege of medical confidentiality that he has under existing law, and give Ken Starr all his medical records. (Evidence of venereal disease could well be relevant to the Starr investigation.) If the Clinton–Shalala proposal were already law, Starr would have the authority simply to demand President Clinton's records.

The "vast right-wing conspiracy" run by Ken Starr wanted to turn Monica Lewinsky into an undercover informant;

Mr. Kopel is research director of the Independence Institute, a free-market think tank in Golden, Colorado, http://i2i.org.

KEN STARR BY ROMAN GENN

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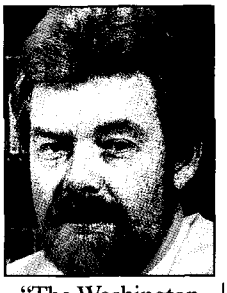

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it wanted to wire her and send her to meet the President and entice him into making incriminating statements. Reprehensible? Standard federal practice under President Clinton.

Mr. Clinton's Equal Employment Opportunity Commission has signed contracts with two private firms to hire "testers" to pose as job applicants and see if potential employers could be caught making passes at them. The Department of Housing and Urban Development already has a major program using "testers" who pose as home buyers, but who are really federal agents waiting to be discriminated against. Vice President Gore has called for a large expansion of the HUD program.

And of course the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, and Firearms all regularly use informants who get paid for doing just what Starr wanted Monica Lewinsky to do for free: abusing the trust of friends by luring them to make incriminating statements which will lead to long prison terms.

Hillary Clinton justifiably complains about Ken Starr's going through the records of her checking account. Perhaps she should have spoken up when her husband insisted that law enforcement needed warrantless access to people's credit, travel, and employment records in order to fight terrorism.

The suddenly thrifty White House is upset about Starr's large staff and the $30 million he has spent. But what about the Department of Justice, whose budget has quintupled—to more than $10 billion—since 1981? What about the increase in the number of Assistant U. S. Attorneys from 1,200 to over 7,000?

Starr is investigating crimes over which the Federal Government has jurisdiction.

Starr, at least, is investigating several crimes over which the Federal Government has legitimate jurisdiction (obstruction of justice in a federal court, criminal acts by White House staff in Travelgate and Filegate), whereas the vast expansion of federal attorneys is the result of the Federal Government's intruding into areas where it has no constitutional authority (such as possession or sale of guns or drugs within the boundaries of a single state, or nonpayment of child support).

The abuses Kenneth Starr is said to have perpetrated should indeed prompt Congress to enact changes in federal laws, and to rein in federal prosecutors. Protections for family privacy, medical privacy, and First Amendment rights strengthen our society; Americans should be able to converse without fear that one party to the conversation is a federal informer.

Indeed, ordinary Americans are far more in need of protection from prosecutorial abuse than is a man with a large staff of government employees running a seven-day-a-week spin operation. Reforming federal law enforcement will strengthen civil society and make America better off—even if reform does make it harder to prosecute some career criminals. Like, arguably, the President of the United States. □

The End of Harassment?

RICHARD DOOLING

JUST as the O.J. trial was a public demonstration of the laws of evidence and procedure in criminal cases, so Paula Jones and her lawyers have provided the American public with an object lesson in the awesome scope and power of our current sexual-harassment laws. One woman's unsupported allegations are grounds for hauling even the President of the United States into a deposition where he can be forced to testify under oath about sexual encounters with former lovers, the size and shape of his penis, his shopping habits, and what books he gives as gifts.

It was not always so. As one pundit after another has reminded us, President Kennedy's escapades remained private, and the country was arguably better for it. Kennedy died in 1963, and Title VII of the Civil Rights Act was passed in 1964; before that there were no civil laws which pretended to referee the timeless scrimmage between men and women for power, money, sex, and influence—a contest which was fought by individuals in the marketplace and in the bedroom, until group rights and identity politics came into fashion.

Title VII began as a statute requiring employers to make decisions about the "terms and conditions of employment" without regard to race, color, religion, sex, or national origin. As any employment lawyer or line supervisor knows, the statute had precisely the opposite effect, because what the company lawyer now needs to know in order to assess hirings, firings, and promotions is the race, color, religion, sex, national origin, age, and disability of the employees involved. This is one of the many pernicious side effects itemized by Richard Epstein and other legal scholars who argue that Title VII is not only unnecessary but actively destructive.

Title VII and the other federal employment laws now protect so many minorities that they in effect confer a right to sue on a majority of employees. Still, to the extent that Title VII prohibits "discrimination" (that is, hiring or firing because of sex or race), it forbids an activity which, in theory, most people discriminated against can easily prove and most employers can easily avoid. Give similarly situated individuals the same pay for the same work. Hire and fire on the basis of objective, quantifiable criteria. Or get sued.

When Title VII acquired tremendous potential for abuse was when the courts decided it prohibited not just discrimination, but something vague called "harassment." As Justice Scalia noted in 1993, Title VII's "inherently vague statutory language . . . lets virtually unguided juries decide whether sex-related conduct engaged in (or permitted by) an employer is egregious enough to warrant an award of damages."

Amen. Any law that can be interpreted as forbidding lewd comments and dirty pictures in the workplace in one jurisdiction, and then as permitting dropping one's pants and saying "kiss it" in another, should be, in constitutional-law lingo, void for vagueness. This is the major complaint of legal

Mr. Dooling is an employment-discrimination lawyer and the author, most recently, of Brain Storm, *a novel just released by Random House.*

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scholars like Eugene Volokh and Kingsley Browne, who have argued for years that Title VII's vagueness chills workplace speech and therefore violates the First Amendment. Employers instinctively prohibit any "sexual" speech for fear of punitive damages.

Ever since Title VII was interpreted as prohibiting "harassment," a parade of women—some arguably harassed, some merely annoyed—have come before the courts. After months, sometimes years, of costly discovery, juries are asked to determine whether she is more believable than he, whether the overture was "sexual," and whether it was "unwanted." And every year charges and suits paralyze companies all over America.

At the height of the Clinton scandal, every other pundit legitimately asked: "Is this how we want our President spending his time?" But this is precisely the question the stockholders ask when a secretary brings a global corporation to a halt by alleging that the CEO told her a dirty joke in the coffee room.

What would happen if Congress passed an amendment to Title VII, which simply confined its interpretation to its original plain language, namely, prohibiting discrimination in the terms and conditions of employment? Would boorish chauvinists have at unprotected women and minorities, who would suddenly be left with no legal remedy? Hardly. Many behaviors prohibited by the "harassment" components of Title VII are already prohibited by other civil and criminal laws. Any unauthorized touching is a battery. Abusive and threatening language may rise to the level of assault. Defamation prohibits injurious statements intended to harm a person's reputation. And so on. In short, what would happen if we simply allowed the same laws that protect us from one another on the street also to protect us in the workplace?

Unlike Title VII, the tort and criminal laws make individuals liable for their own behavior.

Unlike Title VII, which holds companies liable for their supervisors' behaviors, the tort and criminal laws make individuals liable for their own behaviors. How's that for deterrence? But of course, victimized plaintiffs need the employer's deep pockets—which should prompt us to ask ourselves whether it is more important to deter individual harassing behaviors, or to compensate victims with corporate checks under some construct of vicarious liability.

If it is too early in the season of public opinion to call for a repeal of Title VII, the time is ripe at least for pruning its most unworkable and unenforceable sections. Even the feminists quickly stopped talking about vague "power differentials" when the amorphous theory was about to be applied to their guy; maybe we could also do away with the equally vague admonition that all employees have "the right to work in an environment free from discriminatory intimidation, ridicule, and insult."

But above all, the nation should be asking itself: Do we really want to live under a law that pretends to be able to adduce evidence and settle a dispute between a man and a woman who went into a room alone together and came out with different stories? □

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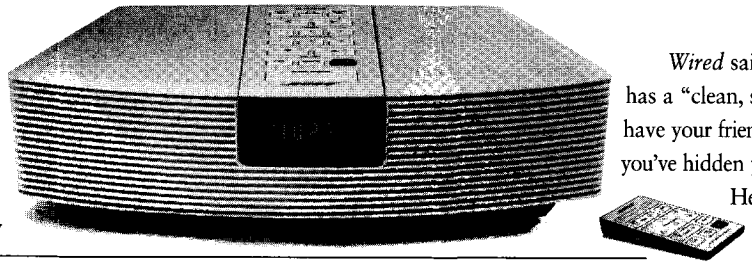

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MILITARY INJUSTICE

Show Trial

My client was railroaded by a politically correct Army brass–the other side of the McKinney case.

CHARLES W. GITTINS

AT 6:45 P.M. on March 13, 1998, a military jury of four Army officers and four enlisted men filed into the courtroom at Fort Belvoir, Virginia, to read the verdict that they had reached after twenty hours of deliberation on the 19 charges of misconduct against former Command Sergeant Major Gene C. McKinney. As Sergeant McKinney stood at attention with his attorneys, the president of the court-martial, an Army colonel, read a verdict that acquitted McKinney of 18 of the 19 charges, including all the charges of sexual misconduct made by his six accusers.

The media described the result as a "surprise verdict." For the participants the verdict came as no surprise. The prosecution's case was long on invective, short on fact. Before the Army's discovery of the abuse of trainees by drill instructors at Aberdeen Proving Ground, the McKinney matter would have been resolved without a trial. But in the Army of the 1990s, a prolonged and agonizing general court-martial was held to be necessary in order to demonstrate the Army's commitment to "zero tolerance" of sexual harassment. Rejecting McKinney's request to retire, which he submitted even before the charges were preferred, the Army opted instead to conduct a million-dollar investigation and show trial of the Army's senior enlisted man.

Mr. Gittins is an attorney in private practice in Alexandria, Virginia. He represented CSM Gene C. McKinney in his court-martial.

Sergeant McKinney was adjudged guilty on the charge of obstruction of justice, a curious finding given the not-guilty verdicts on all the remaining allegations of misconduct. This part of the verdict probably represented the jury's sense that McKinney should have known better than to have contacted a potential witness. But the tapes of that phone call revealed no improper "coaching" on McKinney's part. And uncontradicted evidence presented at trial demonstrated that the government manipulated McKinney into calling this particular accuser (she was also permitted to lie to McKinney about her prior contacts with investigators).

Frederick H. Carlson

The outcome of the trial satisfied no one and vindicated no one, least of all the Army leadership. For McKinney, the conviction on one count will leave a shadow of doubt in the public mind. For his six accusers, there was the humiliation of having their charges rejected by the military jury. And for the Army, its highly publicized demonstration of zero tolerance of sexual harassment largely failed. The longest and most public military trial since the prosecution of Lieutenant Calley for the My Lai massacre ended in a draw, inconclusive and ambiguous. But it offers a number of important lessons for the Army and for the American public.

For the Army, the case showed that whether a soldier is a man or a woman and whether the conduct alleged is sexual harassment or some other, more serious crime, prompt and timely reporting of the conduct to the chain of command is the only appropriate response. The chain of command is the foundation of military authority and discipline. No one is privileged to ignore this fundamental concept. If the problem is not serious enough to merit a timely report by an alleged victim, it is not serious enough to merit a criminal prosecution several years later.

Each of McKinney's accusers waited, in some cases several years, to make her report of misconduct against him. By the time these women made their complaints, memories had faded, and corroborative evidence, if it had ever existed, had long since evaporated. And upon making their separate allegations against Sergeant McKinney his accusers each received a choice assignment and/or immunity from her own more serious misconduct. This quid pro quo ineluctably gave rise to the impression that the Army was buying the accusers' "recollections."

More broadly, trying McKinney on flimsy charges and weak evidence demonstrates once again the problematic nature of criminal prosecution for alleged sexual harassment (the outcome of *Jones* v. *Clinton* gives rise to similar observations for civil litigation). Because sexual harassment is largely defined by the sensibilities of the person on the receiving end of the conduct, it presents a constantly shifting standard not amenable to the application of criminal law. Proof beyond a reasonable doubt is very hard to establish in cases where the only evidence is "he said . . . she said."

The predictable consequence of McKinney's prosecution is that military leaders will be unwilling to mentor or privately counsel subordinates of the opposite sex. They would be foolish to do so. Sexual-harassment allegations are

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a dangerous weapon in the hands of a disgruntled subordinate. Far safer to be a distant leader. For an Army committed to gender integration, sacrificing cross-gender training, mentoring, and leadership was a high price to pay in its effort to get Sergeant McKinney.

But no one could have gleaned any of these lessons from the media coverage of the trial, which once again demonstrated the liberal bias of the broadcast and print media. The trial was covered regularly by a largely female media contingent with little experience in matters military. The reporters' feminist bent was obvious. The media sisters flocked to the courtroom to see the accusers' well-rehearsed and practiced testimony for the prosecution. But, when it came time for cross-examination by the defense, media interest waned dramatically. I would look over my shoulder and see two or three reporters where earlier there had been a dozen or more.

The outcome of the trial satisfied no one and vindicated no one, least of all the Army leadership.

Those few reporters who did choose to observe the accusers on cross-examination apparently failed to understand the significance of impeachment evidence or refused to report it, even where such evidence was plain, unequivocal, and uncontradicted. Consider:

—Sergeant Christine Roy changed her sworn statement that she and Sergeant McKinney were just good friends to say that she had sexual relations with him after she was offered a position as an instructor in a course she was unqualified to teach according to Army Regulation. She was granted immunity from prosecution for her own admitted misconduct, including false statements and adultery.

—Another accuser, Sergeant First Class Rita Jecsala, was granted de facto immunity for her own acts of adultery and for her own admitted defrauding of the Veterans Administration of $10,000.

—The only officer among Sergeant McKinney's accusers, Major Michelle Gunzelman, also was granted immunity in exchange for her testimony. She was forced to admit on cross-examination to several adulterous affairs, fraternization with enlisted personnel under her command (a crime in the military), and indecent assault on an enlisted man under her command.

IF the press didn't seem interested in exculpatory evidence, neither did the Army. The Military District of Washington detailed a young military lawyer to "spin" the evidence daily for the press. That spin was provided by the District's staff judge advocate (military justice's equivalent of a district attorney), who had a pressing interest in convicting McKinney on all charges. The media largely accepted this spin without critical analysis. Had the members of the jury disobeyed their orders not to read media accounts of the trial, they might well have been improperly influenced by inaccurate information supplied by the staff judge advocate.

More importantly, the judgment of those in the military justice system who are responsible for deciding whether to prosecute should be unquestionably fair and unbiased. In this case, it wasn't. The convening authority, Major General Robert Foley, testified that he considered the decision to send Sergeant McKinney to trial to have been the most weighty and important decision he had ever made in the Army. Incredibly, however, Foley admitted in his testimony that he had not read a single word of the 6,000-page verbatim transcript of the Article 32 preliminary hearing before deciding that Sergeant McKinney would stand trial.

The final lesson of the McKinney court-martial is that despite all the Army's bluster to the contrary, there remain two systems of justice in the military, one for officers and one for enlisted personnel. During the trial of Sergeant McKinney, Army Chief of Staff Dennis Reimer permitted a major general, a former aide of his, to retire quickly and quietly while under investigation for misconduct potentially much more serious than that alleged against Sergeant McKinney. Major General David R. Hale retired within two weeks of his request, even though General Reimer had already been briefed on the allegations against his friend.

The prosecution of Sergeant Gene McKinney was an unfortunate chapter in the Army's history. The Army prosecuted its first African-American Sergeant Major with unseemly gusto in an

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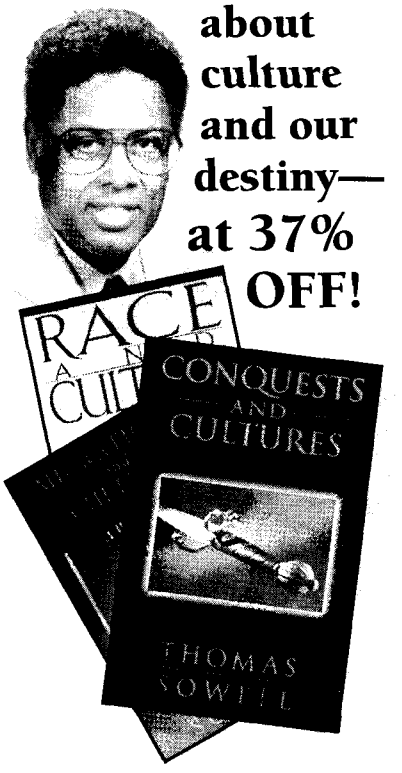

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apparent effort to exorcise the demons of Aberdeen and to prove once and for all that sexual harassment will not be tolerated in the Army. It proved instead that it doesn't mind subjecting its enlisted men to a brutal media circus with the flimsiest of justifications for the furtherance of its public-relations goals. Welcome to the new military. □

Kentucky Derby

The internal split in the Republican Party is not always ideological.

JOHN J. MILLER

RIGHT before the 1990 elections, the frustrations of a draining campaign finally got to Gex Williams, a first-time candidate for the Kentucky state house. He and his campaign manager started yelling at each other in the middle of a parking lot as a dozen startled volunteers looked on. Williams shed his scowl and asked, "Do you wanna pray?" The group joined in prayer, and three days later Williams won by 47 votes, out of more than 11,000 cast.

Having won by a whisker, Williams has gone on to establish himself as the most dynamic legislator in the state capital, a master parliamentarian whose feisty pursuit of pro-life causes and education reform infuriates opponents. The Democrats redrew Williams's district three times in an effort to force him from office. Their first try only drove him to greater success in the State Senate. Now they have finally succeeded in pushing him out of Frankfort altogether, but at a price they may come to regret. Last spring, Williams announced his intention of running for the U.S. Congress in Kentucky's 4th District, which Jim Bunning (R.) is leaving to run for the Senate. Today Williams faces his biggest political challenge yet: battling a GOP establishment whose handpicked candidate, Rick Robinson, has the lead in money and organization.

Perhaps no primary election this year reveals the tensions within the GOP so well as the one between the insurgent Williams and the insider Robinson. The divide separating the two is not so much ideological as a matter of background, emphasis, and style. Both men are solidly conservative, and they would probably have nearly identical voting records in Congress. But Williams wants to focus on social and moral issues while Robinson would rather talk about jobs and the economy. Williams, an evangelical Christian who homeschools his six children, has become a darling of the Religious Right. Robinson is a lawyer who worked in Rep. Bunning's Washington office for six years before returning to Kentucky in 1993, when he started to run Republican political operations in the 4th District.

An impressive roster of nationally known conservative leaders support Williams. Steve Forbes held a fundraiser for him in February. Gary Bauer and William Bennett will do so soon. Ralph Reed is on the campaign payroll. Robinson doesn't have such a list, but he heads a strong team of Republican activists at the county level. More important, he has Bunning's endorsement, which may be the only one that really counts. (A third GOP candidate, Newport lawyer Jim Kidney, is not a factor.)

Kentucky's 4th Congressional District stretches along the Ohio River from the industrial town of Ashland near the West Virginia border to the outskirts of Louisville. It extends across 22 counties, but the bulk of its voters live in the rapidly growing Cincinnati suburbs of northern Kentucky. Although most of the 4th CD's voters are registered Democrats, Republican candidates have done well in the district for some time. Bob Dole won here in 1996, and George Bush in 1992. Bunning, a baseball Hall of Famer, has represented the area ever since his election in 1986. The district is so conservative that the likely Democratic nominee, Boone County Judge Executive Ken Lucas, described himself to the *Kentucky Enquirer* as a "pro-life, pro-gun, pro-death-penalty, pro-business Democrat."

The 45-year-old Gex Williams is an unlikely politician, starting with his offbeat first name (originally a French surname), which is pronounced "Jay." (His church recently unfurled a banner reading "Prex for Gex.") A software programmer by profession, Williams was born and raised in Ft. Lauderdale, though he is of old Kentucky stock and say he's distant kin to Henry Clay. Work took him to Arkansas in the early 1980s, where he met state Rep. Tim Hutchinson (now a U.S. senator) at church. Hutchinson urged Williams to try politics, but he declined. By 1990 Williams had moved to Kentucky. When a friend withdrew from a race against a 19-year veteran of the state legislature, Williams reluctantly agreed to run.

HE soon developed a passion for campaigning. He used his computer skills to customize a database program, and then had his volunteer staff—many of them homeschooled kids—call every household in the district to learn about the issues that would encourage voters to turn out. Williams was massively outspent and trailed his opponent in the polls by a wide margin. Ten days before the election, he flooded the district with targeted mail and pulled off the victory. He has refined the technique since. "I've never seen anything so sophisticated, with its spreadsheets, graphs, and instant data," says Tim Teepell of the Madison Project, a Virginia-based organization that supports social-conservative candidates.

A strikingly intelligent man—"It's not a stretch to call him brilliant," says State Senate colleague Jack Westwood (R.)—Williams has a sharp eye for detail. On the floor of the senate, he often leaps from his chair to point out an obscure passage in the chamber's rulebook. "Parliamentary procedure is like a computer program to me," says Williams. "You have a lot of fixed rules, but you have to move them around to put out a product." On April 1, as the Kentucky senate offered tributes to the chamber's retiring members, one Republican sug-

Mr. Miller is NR's national political reporter.

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gested that they dip a rulebook in bronze for Williams as a departing gift. Another asked Williams to autograph his copy.

Williams put his procedural skills to practical effect in January 1997, when he led a coup against the State Senate leadership. The Democrats, who had controlled the chamber for generations, had rarely permitted anti-abortion legislation to come to the floor for a vote. Through careful negotiation and complicated maneuvering, Williams persuaded five Democrats to peel away from the majority and join the unanimous Republican caucus in electing a pro-life Democrat as senate president.

Perhaps no primary election this year reveals the cultural tensions within the GOP as well as the one between this insurgent and this insider.

The senate then approved a ban on partial-birth abortion, a 24-hour waiting period, and new regulations on abortion clinics. Williams has been active on other issues—he has worked to reform the state's method of testing public-school students, and he takes a dim view of gambling—but abortion is the issue that animates his public life.

Williams's opponent in the primary, Rick Robinson, is hardly soft on abortion—his literature calls it murder—but he has not made the issue the centerpiece of his campaign. He points out that there is not a single abortion facility in the 4th District, a fact corroborated by Kentucky's Office of Vital Statistics. "Voters have other things on their minds," says Robinson. Although the economy of northern Kentucky is roaring, unemployment is above the national average in the district's eastern counties. When Robinson meets with local religious leaders, even they want to talk about the economy and taxes. "The most important thing I can do as a Christian in Washington is help create jobs here," he told Van Firestine, the pastor of Raceland's Grace United Methodist Church. Firestine nodded in agreement.

Robinson is an affable Bill Gates look-alike whose extensive network of GOP operatives may swing more than enough primary voters his way. He adapts easily to all kinds of settings—he is as comfortable making deals in his corporate law office as he is humming along with a country song at a family diner. He seems a natural fit for the district, able to straddle the cultural divide between its suburban soccer fields and its rural tobacco patches. If he makes it through the primary May 27, he will probably stalk the halls of Congress for quite some time.

As for Williams, his phone banks have been buzzing with activity for months, but the legislative session in Frankfort has kept him from the campaign trail. He starts out with higher name recognition than Robinson, but so far Robinson's are the only billboards on the landscape. Many Republicans worry about Williams's electability outside his own suburban turf. "When you get him out on plowed ground, he won't stand up," says Doug Morgan, a state Republican committee member who has endorsed Robinson. "Can Williams keep the seat and hold it? I'm not so sure." Rumor has it that the conservative Democrat Lucas entered the race in the belief that if Williams earned the GOP nod, the district would no longer be a Republican gimme.

Williams has faced long odds before. He's off to a late start, preparing to be outspent, and the conventional wisdom is starting to turn against him. But he doesn't seem concerned. On the second-to-last day of the legislative session in Frankfort, a right-to-life activist interrupted his lunch in the capitol building's cafeteria to complain about the fading prospects of a bill in the Kentucky House. Williams looked her in the eye. "Wanna pray?" □

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Didion Bombs

A disquisition on madness is an occasion for hilarity.

JOHN O'SULLIVAN

FOR a literary magazine, *The New York Review of Books* has a curiously intimate relationship with bombs. In the Sixties, it published on its cover a diagram on the construction and ingredients of a Molotov cocktail. (Roger Kimball tells us in his droll *New Criterion* account of how *TNYRB* helped to make Sixties radicalism chic that David Levine, its resident and brilliant caricaturist, responsibly refused to draw the device.) Other *New York Review* contributors at that time apparently had a closer acquaintance with explosive substances. Tom Hayden, for instance, reported from Newark that in the riots there "many missiles were thrown at cars driven by whites, but not often with murderous intent;" and again of whites that "very few, if any, were shot at."

That was thirty years ago, of course, and a lot of blood has flowed under the bridge since then, some of it belonging to David Gelernter, a professor of computer science at Yale, who suffered severe injuries when a bomb sent to him by Theodore Kaczynski, the so-called Unabomber, exploded in his hands. Mr. Gelernter has since published *Drawing Life*, an account of his recovery from those injuries interspersed with reflections on why modern America has seemingly lost the capacity to condemn such wickedness in simple moral terms. And, in turn, many people naturally felt curious as to how *TNYRB* would handle this incendiary document.

With the greatest caution apparently: although *Drawing Life* was published last September, it is only now reviewed in the April 23 issue of the magazine. And with a proper concern for balance: Mr. Gelernter's book is reviewed jointly with the Unabomber's own manifesto (and alongside Sylvia Nasar's forthcoming *A Beautiful Mind*). And by a reviewer selected for just the right degree of sympathy: Mr. Gelernter's descent into the darkness was handed for judgment to novelist Joan Didion, whose characters typically suffer the pale mauve twilight of the soul. In short, learning from the Unabomber's failure, *TNYRB* left nothing to chance.

For Miss Didion has a case to argue. Naturally she does not argue the case; she scatters its fragments around and leaves the reader to assemble it as best he can. Once it has been patched together with string and sealing wax, however, her thesis seems to be that Theodore Kaczynski is mad, as brilliant scientists often are, and that Professor Gelernter is being willfully obtuse, *and* striking a bogus political posture, *and* taking unfair advantage of his victim status, in insisting that Kaczynski is not mad but evil.

Miss Didion does not argue the case; she scatters its fragments around and leaves the reader to assemble it as best he can.

The first fragment is an account of Kaczynski's poor Midwest background, early academic success, and subsequent retreat to the woods. It repeatedly stresses his resemblance to a Dreiser character. Are all striving Midwesterners out of Dreiser? Or is Miss Didion entering a pre-emptive defense against a charge of polemics? Who can say? At any rate there is no harm in it.

Her take on the Unabomber's manifesto is more complex. She concedes "its central argument": namely, that the consequences of the Industrial Revolution, even as they have "greatly increased the life expectancy of those of us who live in 'advanced' countries," have also "destabilized society," "made life unfulfilling," "subjected human beings to indignities," "led to widespread psychological suffering," and "inflicted severe damage on the natural world." These views, she shrugs, were by 1995 "unexceptionable, arguable only to the extent that the reader might place a greater or lesser worth on increased life expectancy."

A similarly airy dismissal of this vital point was, as it happens, skewered very effectively by Macaulay 150 years ago in his attack on Southey's "Colloquies on Society": "We might with some plausibility maintain that people live longer because they are better fed, better lodged, better clothed, and better attended in sickness, and that these improvements are owing to that increase of national wealth which the manufacturing system has produced." As for the general outlook described by Miss Didion as "unexceptionable," it must seem highly arguable to anyone who thinks that the pains and stresses of pre-industrial life or the recent repairs to the environment should be weighed in any judgment of the Industrial Revolution. But, initially at least, it reassures Miss Didion.

And then, with a sickening lurch, she sees "a mind spiking past the point of no return." The Unabomber holds right-wing as well as left-wing views. All jumbled up. Totally confused. The confusion, of course, lies in the fact that most people, "the wicked as well as the good," combine views usually found at opposite ends of the political spectrum. Timothy McVeigh thought that Waco meant the Federal Government was illegitimate; he also thought factory farming barbarous. This did not signify madness, merely independence of mind.

But Miss Didion has more evidence up her sleeve. Kaczynski's ideological confusion was only the first disconcerting tic; the clinching evidence of his insanity deserves to be quoted in full, Dreiser and all:

> And then, with the irreversible momentum of dreams, the manifesto slipped into the deepest water of its most desolate lake, the colloquial voice, and into what must have seemed to its author (as the drowning of Roberta in *An American Tragedy* had seemed to Dreiser, who made Clyde Griffiths die for it) the only possible next step, the logical thing to do, the clincher:

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> "Take us for example. . . . In order to get our message before the public with some chance of making a lasting impression, we've had to kill people."

Now, it would be an intellectual achievement of sorts to make wickedness the proof of madness in a debate over whether Kaczynski is wicked or insane. Step outside the circle of Miss Didion's logic, however, and ask if a willingness to murder indicates madness in other contexts. As I write, Gerry Adams is praised for his statesmanship by respectable politicians because he agrees to stop murdering people for political gains. And the clinching evidence that he is not mad is that he is making political gains.

IN her indirect fashion, however, Miss Didion has left the Unabomber's quote hanging in the air and gone straight to the periphery in order to examine the second fragment: Miss Nasar's account of the descent into madness and subsequent "awakening" of a distinguished Princeton scientist, John Nash. As a serviceable *précis* of a fascinating story, this is useful enough. All it adds to Miss Didion's thesis, though, is the supporting point that very clever people are often aloof and emotionally detached and sometimes go mad. As a general truth, this is already well known ("Great wits are sure to madness near allied/And thin partitions do their bounds divide"); and it offers no support to the claim that a particular clever person has gone mad. After all, most clever people remain sane.

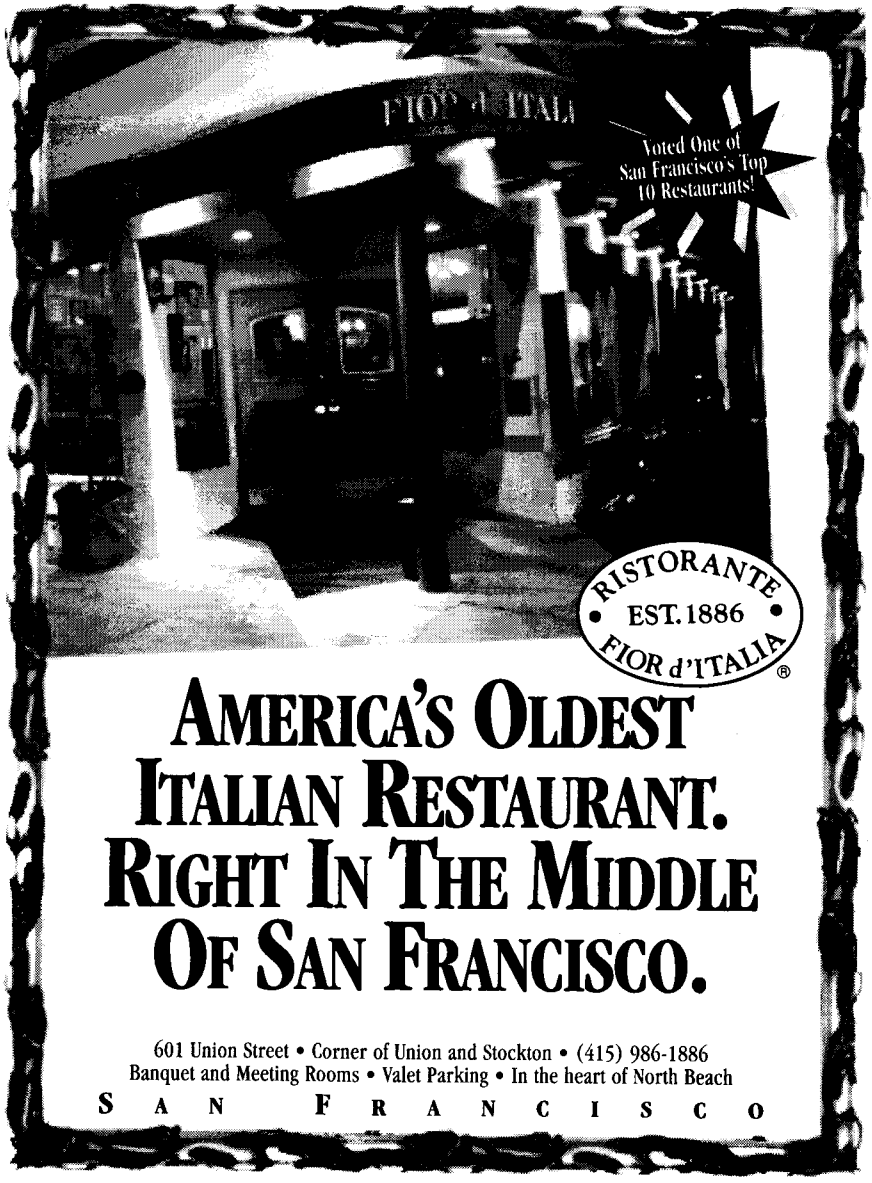
After this detour, Miss Didion at last approaches the third fragment, Professor Gelernter's large unexploded book, and her tone changes. She abandons sympathy, understanding, and concern for context. Dreiser is yanked from the stage. Instead, querulousness, condescension, and a petty logic-chopping dominate her response to the book—or rather her responses, since she debates Professor Gelernter rather than reviews him. That might in theory produce a lively, if savage, polemic. But the meandering flatness of Miss Didion's writing robs it even of that interest. The result is like a bad production of Chekhov in which adulteries, attempted suicides, and financial ruin all occur on stage but in which nothing ever seems to happen.

Her first attack is that Professor Gelernter's opinions almost always rest on "unestablished" premises, smuggled through in the form of adjectives. She is so pleased with this insight that she uses the word "unestablished" five times in a single (admittedly interminable) sentence. It is a withering assault on the philosophical treatise Dr. Gelernter never wrote. The non-narrative sections of his book are his opinions, his reflections, his emotional, aesthetic, and intellectual musings on both his own plight and the country's decline. Although sometimes expressed in argumentative prose, they are largely rooted in personal observation and common sense and need not follow strict rules of formal logic. Still, Professor Gelernter did miss a trick in not describing them as "unexceptionable."

When Miss Didion can find no real grounds on which to object to these opinions, which is most of the time, her mode of argument is to repeat them in tones of ironic patronage. Thus:

> Again, the suggestion that he is not rotten at art, whatever he construes 'art' to mean, remains unsupported, and is clouded further by *Machine Beauty*, in which he endeavors to present, as if it were novel, the notion that there is art, or 'beauty' and 'elegance,' to be found in science and technology.

Such aloofness and emotional detachment are not signs of impending madness on Miss Didion's part, of course, merely a disguise for ideological irritation. But it looks pitiably thin a few lines later when she concedes (without conceding) that Professor Gelernter's idea of machine beauty *is* novel in that it emphasizes external decoration as much as internal logical parsimony.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In her final foray, Miss Didion returns to the question of Kaczynski's madness. Professor Gelernter had argued that declaring him insane was "an argument for eliminating the very idea of guilt." And when the main evidence of insanity is the crime itself, that is correct. But Miss Didion thinks it is "dishonest," and furthermore dishonest "in the service of ideology," and in addition exactly what we should expect from a man who, because of his victim status, feels free to strike bogus attitudes on issues ranging from modern feminism to intellectuals to our anti-judgmental culture in general.

Need more be said than that to be accused of attitudinizing by Joan Didion is something to be preserved, and polished, and wrapped in cotton wool, and hidden away in a safe place, to be retrieved on cold winter nights when Professor Gelernter needs laughter and consolation.

In Northern Ireland they have a phrase for the kind of bomb that Miss Didion wrote and *TNYRB* published. They call it an "own goal." □

Faulty Memory

The Holocaust Museum does a disservice to its visitors and its cause.

DAVID NEFF

ONE of the more fascinating displays on view at the U.S. Holocaust Museum concerns the Nazis' racialist anthropology. The Nazi purported to identify the physical characteristics of Jews, measuring noses, in particular, and creating charts to help the *Volk* spot the stigmas of the non-Aryan. These charts contained nowhere near enough truth to qualify as science, but just enough for the people to find them plausible. The point of the display: Genocide does not require gas chambers. It does require stereotypes.

Indeed, the museum is a monument to the dangers of viewing people as stereotypes. All the more reason, then, to lament the fact that its continuously running orientation film on anti-Semitism fosters crude stereotypes of Christians.

In December, Michael Horowitz of the Hudson Institute and five other prominent Jewish thinkers—Elliott Abrams, David Dalin, Chester E. Finn, Michael Ledeen, and Michael Medved—wrote a letter to the museum's then-director, Walter Reich, asserting that the film "repeats and propagates libels of Christianity." They asked to meet with Reich "in order to set a process in motion" to evaluate the film, in hopes of seeing it thoroughly revised. The letter did not persuade Mr. Reich to set up such a meeting, but it did bring the authors a lot of heat—from vituperative e-mail to a public attack in *The New Republic*, where literary editor, Leon Wieseltier, attacked them on peripheral matters, labeled them conservatives (as if that were relevant), and called them "spoiled children of the Enlightenment."

The 14-minute film seems designed to make any Christian viewer squirm. It states in barest fashion the Jewish origins of Christianity and the fact that some Gospel accounts seem to be "blaming the Jews and their leaders for the crucifixion." It rehearses Christianity's rise to prominence following the Roman destruction of the Temple. It recounts the calumnies of the Church Fathers against the Jews "as agents of the devil and murderers of God." Ghettos. Restricted occupations. Spillover violence from the First Crusade. The blood libel and the Black Death. It is all here. And it is all true.

But selected truths linked by a loose *post hoc* logic can create false impressions. As the film passes from Christian anti-Judaism through Enlightenment anti-Semitism to Nazi racism, it reintroduces Christian references in order to tie Hitler's racist philosophy to the religious prejudices of the medieval Church. It identifies Hitler as a baptized Catholic, and quotes him as saying, "In defending myself against the Jews, I am acting for the Lord. The difference between the church and me is that I am finishing the job."

The film has wrested these quotations from their contexts, completely changing their meaning. The first sentence comes from a famous passage in *Mein Kampf* recounting Hitler's conversion to anti-Semitism. The "Lord" of whom Hitler speaks in this context is not the God of Abraham, Isaac, and Jacob—or Jesus—but the Power (variously Eternal Nature, Fate, and Inscrutable Destiny) that he believes superintends the Darwinian struggle for racial superiority. The second sentence, from Hitler's *Table Talk*, recounts the response he offered to two bishops who confronted him over Nazi racial policy. It provides no evidence of his motivation but simply his self-defense. Hitler and the Nazis actually disdained Christianity as tainted by the Jewish doctrine of our common humanity.

After reintroducing Christian themes through these Hitler extracts, the film traverses the Nazi horrors in a mere 14 sentences and winds up with a 2-sentence conclusion: "In the aftermath of the Holocaust, Christian churches are re-examining their teaching on the Jews and Judaism. In 1994, the Evangelical Lutheran Church in America rejected Martin Luther's writings on the Jews."

Thus this film—broadly titled *Anti-Semitism*, not *European Anti-Semitism* or *The Roots of Nazi Anti-Semitism*—begins and ends with a focus on Christianity. By its selectivity and structure, it strongly implies continuity and even ideological coherence between the anti-Judaism of medieval Christianity and Nazi racial supremacism.

The film has wrested quotes from their contexts, completely changing their meaning.

Such assertions of continuity are meekly accepted by the public, and fos-

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tered by some academics. But as Marc Saperstein points out, they are misleading. Saperstein, a widely respected professor of Jewish history at George Washington University, acknowledged in a paper he read at Southern Methodist University that, yes, the Nazis bent Christian anti-Jewish statements to their propagandistic service. They devoted, for example, an entire issue of *Der Stuermer* to the theme of Jewish ritual murder, and they reprinted and distributed in Lutheran regions of Germany the most virulent portions of Luther's "On the Jews and Their Lies."

But Saperstein makes key distinctions: first, between "what is authentic and central in Christian doctrine about the Jewish people and what is peripheral and anomalous"; and second, between "what is central and peripheral in Nazi anti-Semitism." He then shows just how weak the case is for attributing the liquidation of the Jews to religious motivations, explaining what ought to be an obvious point about historical continuities: "Two historical phenomena may have ten aspects in common and one difference, but that one difference may be important enough to make the second phenomenon totally new."

Between Christian and Nazi doctrines regarding the Jewish people, Saperstein finds not just one but three differences that made the latter "something totally without precedent or preparation in the past." First was the racial, rather than religious, definition of the Jews. Whether it was the cross-bearing soldier participating in anti-Jewish riots during the First Crusade or the vituperative Martin Luther, Christians even at their worst offered baptism to Jews, and (with the single horrible exception of fifteenth-century Spain) in baptism the perceived problems of their Jewishness evaporated. Not so for the Nazis, who rooted out baptized and assimilated Jews—not only from secular society but from monasteries and convents as well.

The second Nazi innovation was the mobilization of the full power of the totalitarian state for the destruction of the Jews. Both the imperialized Church and the Christianized Roman Empire needed the Jews and protected them. In that earlier era—culturally remote from modern notions of individualism—people took their identity from groups, and *cujus regio ejus religio* made sense. In those days the Church launched crusades against Christian heretics and Muslims, but one non-Christian religious group was generally tolerated (though miserably circumscribed), and that was the Jewish people. When anti-Jewish violence occurred it was almost always the work of mobs and fanatics; the state often used its power to protect Jews. Not so with the Nazis.

The third Nazi innovation was "the policy of genocide, the goal of total physical annihilation for the Jewish people." From St. Augustine to Pope Clement VI, Church hierarchs taught that the Jews were not to be killed.

SAPERSTEIN says he has encountered resistance to his ideas: "There's something at stake in asserting responsibility for Christian teaching in the Holocaust." What is at stake, although he does not say so, is a historiographical enterprise bent on reducing Christianity to a history of oppression. Just as the Holocaust Museum's film fails to mention those "righteous Gentiles" who were religiously motivated to save Jews, the historiography of oppression cannot afford to recognize the positive, democratizing, and liberating influences of the Church through the centuries. This enterprise resists true historical ambiguity in favor of a program devoted, in the words of Harvard law professor Mary Ann Glendon, to "strategically reinventing history in the service of various agendas."

Pope John Paul II recently apologized for the "errors and failures" of some of the "sons and daughters of the Church." That is not enough for critics like DePaul University's Douglass Cassel, who wants the Pope to acknowledge with the German bishops the "co-responsibility" of the Church. In fact, such a blanket apology, as Prof. Glendon demonstrated recently in *First Things*, would be inconsistent with the Catholic Church's self-understanding. A case can be made that Christians should take some communal responsibility for an anti-Semitic tradition that lowered the German people's resistance to the virus of Nazi racial theory. But, as Prof. Glendon notes, some critics will never be satisfied until Catholics "apologize themselves into nonexistence."

Consider Rosemary Radford Ruether's 1974 book, *Faith and Fratricide: The Theological Roots of Anti-Semitism*. It combs the New Testament and the Church Fathers in search of young shoots of anti-Jewish tares springing up amidst the wheat of developing Chris-

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tology. What can be distinguished in the beginning, she concludes, cannot be separated when full grown, and must be uprooted altogether. Shifting metaphors, Mrs. Ruether calls anti-Semitism the "left hand of Christology": to end it, Christians must abandon their defining belief that Jesus is the savior of the world and make him only the savior of some.

The U.S. Holocaust Museum should not, no matter how tangentially, be part of any such project. It is a museum of conscience and memory. Its job is to report how Jews have suffered, in large part because of vicious stereotypes about them. That is why it should take great care not to foster prejudices against Christians. What better time than now, on the museum's fifth anniversary, to correct its account of the most tragic event of the twentieth century? □

Pack It In

The tobacco industry set itself up. That doesn't make the emerging legislation any better.

ROBERT A. LEVY

BURNED by embarrassing documents, abandoned by its political supporters, its executives accused of lying under oath—apparently that's still frowned on in some circles—the feckless tobacco industry finds itself vilified as never before. That is the backdrop for the appalling bill that has emerged from the Senate Commerce Committee, chaired by Arizona Republican John McCain. His proposed legislation is harmful policy and unconstitutional to boot. But Congress seems willing to overlook such details when the spoils amount to hundreds of billions of dollars.

Last June, you will recall, a coterie of state attorneys general, joined by plaintiffs' lawyers and public-health advocates, announced a sweeping "resolution" of state Medicaid suits. The tobacco industry agreed to disgorge $370 billion in monetary damages over 25 years, pay additional penalties if specified reductions in smoking by teenagers didn't occur, submit to Food and Drug Administration regulation, cease all vending-machine sales, and rein in certain marketing practices allegedly targeted at children. In return, the tobacco companies were to be immunized from punitive damages for their past conduct and from new class-action lawsuits. Individuals could still sue, but subject to a $5-billion annual cap on compensatory damages.

Now the McCain bill brings the boot of government down even harder on the industry's neck. Like the agreement reached last summer, the new bill would expand FDA control, sharply curtail advertising, and ban vending-machine sales. But instead of $370 billion, it would extort from $500 to $600 billion from the industry (estimates vary), raise the cap on compensatory damages from $5 billion to $6.5 billion per year, and increase potential penalties if the reduction in teen smoking doesn't meet established goals. Most important, Sen. McCain refuses to offer the quid pro quo that the industry most covets: immunity from punitive damages and future class-action lawsuits.

This final provision on immunity is commendable. If a smoker is injured, our tort system permits him to seek recovery from those who caused the injury. Yes, legislatures can alter the rules at the margin (e.g., they can permit or eliminate punitive damages), but they cannot cut into the irreducible core of our due-process right. When a plaintiff is prevented from suing as a member of a class, when compensatory damages are subject to an upper limit, when those constraints minimize his chances of attracting skilled legal assistance to confront a well-financed and competently represented defendant, then that right has been fundamentally compromised. The McCain bill preserves that right.

But the rest of the bill is awful. Foremost, there's the neglected matter of free speech. The McCain bill is an outrageous violation of the industry's First Amendment right to advertise a legal product. It would ban outdoor and Internet ads, characters like the Marlboro Man and Joe Camel, tobacco logos on non-tobacco merchandise, sponsorship of sporting events, even color ads on the back covers of adult magazines; and it would restrict the placement, color, and size of point-of-sale displays.

It doesn't take a constitutional scholar to realize that the proposed rules are ridiculous. We treat flag burning and Ku Klux Klan orations as protected speech; we even insulate "gangsta rap" from the censors. But if Tiger Woods shows up wearing a jacket emblazoned with a Joe Camel emblem, our new speech guardians will hold the executives of R. J. Reynolds accountable.

Industry critics point to the impact of tobacco ads on uninformed and innocent teenagers. But the debate is not over whether teenagers smoke; they do. It's not over whether smoking is bad for them; it is. The real question is whether tobacco advertising can be linked to increases in aggregate consumption. There is no evidence for that link. The primary purpose of cigarette ads, as of automobile ads, is to persuade consumers to switch from one manufacturer to another. Six European countries that banned all tobacco ads have seen overall sales increase—probably because now that the ads no longer appear, neither do the warnings of health risks.

It doesn't take a constitutional scholar to realize that the proposed rules are ridiculous.

Not only does the McCain proposal offend the Constitution, it also raises questions of influence peddling. Take legal fees. Both the original June settlement and McCain's updated version resulted from the efforts of a handful of private attorneys, hired on contingency arrangements calling for payment of 10 to 25 per cent of recovered damages.

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Those favored members of the plaintiffs' bar were in a hopeless conflict of interest, serving as government subcontractors wielding the coercive power of the state—with financial incentives geared to the magnitude of their conquest—while simultaneously representing future litigants whose rights have been truncated in the process.

What's worse, contingency-fee contracts were awarded without competitive bidding to attorneys many of whom had bankrolled state political campaigns. In Mississippi, Attorney General Mike Moore selected his number-one campaign contributor to lead the state's bargaining team. In Texas, Attorney General Dan Morales chose five firms for his multi-billion-dollar tobacco litigation. Four of the five contributed a total of nearly $150,000 to Morales from 1990 to 1995. And in Maryland, the state's attorney, Baltimore Orioles owner Peter Angelos, who contributed $235,000 to various Democratic political committees from 1995 through 1997, stood to collect 25 per cent of a $3-billion payoff—despite losing the state's case in court. The Democratic governor and attorney general successfully pushed legislation reinstating the case under revised rules that will guarantee victory. Worried about how a $750-million payoff might look, the General Assembly reduced Angelos's fee to a barebones $375 million (a lawyer with a contingency contract ordinarily gets nothing if his case is thrown out).

IT'S bad enough that last summer's settlement would transfer wealth from low-income smokers to millionaire attorneys in the form of contingency fees, but that's only the beginning. McCain has also proposed a $1.10 increase in the price of a pack of cigarettes over five years to provide the $6.5 billion that could be paid out in damages for individual liability claims. This new tax is madly regressive: more than half of it will be paid by smokers with annual incomes of less than $30,000; only 1 per cent will be paid by smokers who earn $100,000 or more.

Furthermore, if we add $1.10 to the existing excise tax of 53 cents, and then add the 15-cent tax increase in the latest budget, that's a total of $1.78—more than $40 billion annually, assuming no change in the 23 billion packs sold each year. Even with lower sales, there are

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enough billions in perverse incentives to guarantee a flourishing black market.

When California, Maryland, Michigan, and New York hiked their state cigarette taxes, the result was rampant smuggling—not just from low-tax neighboring states, but also from military bases, Indian reservations, even Mexico, with exported cigarettes being smuggled back into the United States. After Canada raised its excise tax, smuggled cigarettes accounted for an estimated 30 to 50 per cent of consumption; Canada was forced to lower the tax in order to keep smuggled cigarettes away from children.

Cigarette taxes are a perverse incentive even leaving black markets aside. While our governments, federal and state, claim they want to reduce smoking and are doing so much to make smokers' lives difficult, these governments have benefited handsomely from excise-tax collections. Therein lies a major reason they have been unwilling simply to make cigarettes illegal.

The correct disposition of the McCain bill is the one that Steve Forbes prescribed for the tax code: Kill it, drive a stake through its heart, bury it, and start over. Disputes between private parties cannot be resolved in secret negotiations involving attorneys general seeking to replenish their Medicaid coffers, contingency-fee lawyers padding their wallets at public expense, and health groups intent upon imposing their lifestyle choices on the rest of us. It is our courts, not our legislatures, in which the resolution of private disputes should take place. At the very least, the McCain bill should be stamped "Warning: This Legislation Is Dangerous to Your Liberty." □

Democratic Church

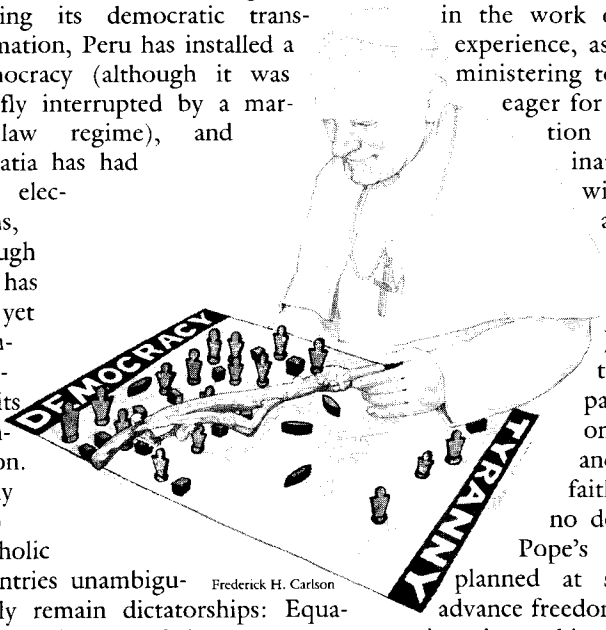
Maligned as 'autocratic,' the Catholic Church has become a great engine for democratic change.

ADRIAN KARATNYCKY

THE last quarter-century has been a period of dramatic turmoil that has seen the fall of brutal dictatorships and the disappearance of Communism as a global creed. But widely overlooked while we concentrated on the Soviet Union and China is the change that has occurred in the Catholic world.

Indeed, one of the untold stories of the late twentieth century is that dictatorship has been virtually eliminated in countries with a Catholic majority. At the center of this dramatic development has been Pope John Paul II. As he has carried out his global pastoral mission over the last 18 years, the Polish Pope has emerged as the world's most important and effective advocate of freedom and democracy.

When Karol Wojtyla acceded to the pontificate, 22 of 42 countries with a Catholic majority were tyrannies. Most of these dictatorships have now collapsed, including those in Argentina, Chile, the Czech Republic, Guatemala, Hungary, Nicaragua, Paraguay, Poland, the Philippines, and Lithuania. In addition, Mexico is on the verge of completing its democratic transformation, Peru has installed a democracy (although it was briefly interrupted by a martial-law regime), and Croatia has had free elections, though it has not yet completed its transition. Only two Catholic countries unambiguously remain dictatorships: Equatorial Guinea and Cuba.



Frederick H. Carlson

As political scientist Samuel P. Huntington has written, the Third Wave of democratization is largely a Catholic wave. In fact, Catholicism's democratic influence now reaches well beyond Catholic countries. For example, Catholic activism in support of democracy played a central role in South Korea, which on February 24 inaugurated a member of its small Catholic minority, the former political dissident Kim Dae Jung, as president.

What is there in the Catholic tradition that has contributed to the democratic opening? Until the 1960s, social scientists contrasted Catholicism unfavorably with Protestantism in this regard. The Protestant denominations were said to be more democratically organized than the more authoritarian Catholic Church. Protestantism, too, was viewed as more focused on the individual in his relationship to God. Yet, as Huntington has put it, all this underwent a rapid alteration: "In the 1960s . . . changes within the Church brought a powerful social institution into opposition to dictatorial regimes, deprived those regimes of whatever legitimacy they might claim from religion, and provided protection, support, resources, and leadership to pro-democratic opposition movements."

As it happens, the hierarchical structure of the Catholic Church was precisely what ensured great uniformity in the message and its more rapid dissemination in a wide variety of settings. Ever since the papacy of John XXIII, that message has had a pro-democratic cast. But the trend reached an apogee in the work of John Paul II. His experience, as priest and bishop, of ministering to an oppressed nation eager for democracy and liberation from Russian domination had awakened within him a profound attachment to democratic values.

Although the central purpose of Pope John Paul's foreign travels has always been pastoral—with a focus on spreading God's word and ministering to the faithful—there also can be no doubt that some of the Pope's travels have been planned at strategic moments to advance freedom. This was his mission in going to his native land in 1979, one year before the emergence of the Soli-

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darity trade-union movement, and again in 1987, a year and a half before roundtable talks led to the collapse of Communist rule there. In 1987, John Paul also traveled to Chile, contributing to the growing pressure against General Pinochet's military dictatorship, and to Argentina, where he pressed a new democracy to strengthen protections for human rights. Chile's tyranny fell in less than two years, and Argentina's democracy endured. Most recently, the Pope traveled to Cuba, where he was greeted by hundreds of thousands chanting, "*Libertad*, *libertad*." And in mid March he traveled to one of Africa's most repressive states, Nigeria, whose ten million Catholics represent an important latent force for democratic change.

In his missions to closed and repressive countries, the Pope consistently seeks to reinvigorate the Church and engage lay Catholics in support of human rights and democracy. He exerts political influence through a synthesis of faith and modern social teaching that asserts that human freedom and individual rights are an expression of God's design for mankind.

According to the Pope, totalitarian dictatorship violates Christian teaching because it arrogates for itself the right to "lead history to perfect goodness . . ." In a 1987 encyclical, *Sollicitudo Rei Socialis*, John Paul suggested that the individual and the community cannot develop in the absence of a healthy political system "as expressed in the free and responsible participation of all citizens in public affairs, in the rule of law, and in respect for and promotion of human rights."

This unequivocal endorsement of political freedom (although never as an end in itself: the Pope has written that democracy needs a core set of faith-based values, without which it "turns into open or thinly disguised totalitarianism") has been coupled with a message for the need for freedom of association and the clear endorsement of the efficacy of the "business economy," which the Pope has stated is based on "human freedom exercised in the economic field." The Pope's economic views brought an important clarification to a potentially divisive issue within the

Mr. Karatnycky is President of Freedom House and editor of the new book, Freedom in the World 1997–98*:* The Annual Survey of Political Rights and Civil Liberties.

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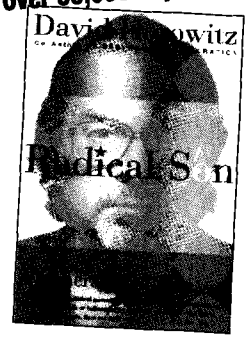

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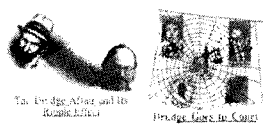

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Church. In the 1960s, as part of Catholic democratic ferment in Latin America, many priests embraced a quasi-socialist economic agenda, wrongly identifying a fundamentally corporatist and crony-capitalist oligarchic system with the free market. The Pope's embrace of the market and his linking of democratic political progress with economic freedom took the steam out of this movement, and gave further momentum to democratic change in Catholic countries.

To be sure, the impact of papal visits on closed political systems is never immediate. Even in his native land, strikes and mass trade-union action took time to gather force. But Polish dissident leaders clearly remember a landmark shift in public consciousness that arose from the Pope's dramatic first visit. A similar dynamic has taken over in other countries that he has visited: first there is a shift in public awareness; this then spurs religious activity accompanied by lay Catholic activism in the form of cultural groups, Catholic discussion clubs, libraries attached to parish churches, and the growing influence of the frequently circumscribed Catholic press.

In closed societies, these forces become a focus of organized life outside the direct control of the authoritarian or totalitarian state—in short, an alternative democratic Catholic culture that opposes the values of dictatorship. Also, the fact that the church hierarchy reports to Rome—with the election of bishops, for example, requiring confirmation by Rome—insulates the hierarchy from interference by the dictatorial state and ensures a measure of independence for the church community. Priests and hierarchs like the Philippines' Jaime Cardinal Sin, Nicaragua's Miguel Cardinal Obando y Bravo, the Czech Republic's Father Vaclav Maly, and Poland's martyred Father Jerzy Popieluszko are all heroic by-products of the Catholic Church's independence from the state.

There can be no doubt that some of the Pope's travels have been planned at strategic moments to advance freedom.

There are other factors—including the growing transparency of borders, innovations in technology that increase access to information, and the emergence of robust middle and working classes—that have helped propel the remarkable march of democracy in the Catholic world during John Paul II's papacy. But there is no question that the Pope's teachings on human rights and freedom of association, and his support for the free market, have played a central role in the democratic wave of change in the Catholic world.

How strange it is, then, that the Pope continues to be regarded by many in this country as an aged man whose antiquated values are out of touch with those of most "modern" Catholics. There are millions of Catholics in dozens of newly democratic countries who can testify to the contrary. □

Penalty Box

A much-needed reform seemed poised to hasten executions—until federal judges got their hands on it.

ANDREW PEYTON THOMAS

NEVER has the grim reaper been denied so unjustly for so long. Between 1977 and 1996, the average time that a condemned prisoner sat on death row almost tripled, from just over 4 years (51 months) to over 11 years (134 months). In some states, especially the unfortunate Western block of states trapped in the sprawling, liberal Ninth Circuit Court of Appeals, delays were even longer. In California, the average delay is 13 years and 5 months. Arizona's capital cases languish in the federal courts for more than 8 years on average.

In April 1996, Congress tried to do something about this dysfunctional system by passing the Antiterrorism and Effective Death Penalty Act (AEDPA). The act greatly reined in habeas-corpus petitions, the suits that death-row inmates file in federal court for review of their state death sentences; it ensured that habeas petitions could no longer be dragged out for a decade or more. Such suits would have to be filed within 180 days after either final affirmation of the condemned man's conviction by a state court or expiration of the time for seeking such review.

The act also sought to impose some discipline on federal judges. It required district-court judges to render a decision on a capital habeas petition within 180 days of its filing. Federal courts of appeals were given 120 days to hand down their rulings after the reply brief was filed. "No delay in disposition shall be permissible because of general congestion of the court's calendar," the act stated. Habeas petitions are to be "given priority" over "all noncapital matters," and federal courts may consider only those claims raised by the petitioner in state court.

The AEDPA seemed a reasonable, studied response to the seemingly interminable delays in executions of first-degree murderers across the land, delays that resulted largely from the federal courts' leisurely processing of federal habeas appeals (generally, federal judges are fond neither of the death penalty, nor of working under a deadline). But it already seems clear that the AEDPA is an abject failure, a metaphor for the very problem it was meant to help remedy: an out-of-control federal judiciary, impervious to the claims of the rest of the political system, or even of simple justice.

According to the AEPDA, for a state to "opt in" to the new system and take advantage of the habeas deadlines, it

Mr. Thomas, an attorney in Phoenix, is a former assistant attorney general for Arizona.

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must meet certain requirements. The state must establish a "mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in state post-conviction proceedings brought by indigent prisoners." This mechanism must offer counsel to all poor inmates under capital sentence. States with a "unitary" appellate system (chief among them is California) must establish standards of competency for appellate counsel and provide them with reasonable compensation.

Whom did the act entrust with determining whether a state has met the opt-in requirements? Congress gave this critical responsibility to the very federal judges whom the act was meant to control. Not surprisingly, they have been in no hurry to declare the states in compliance. To date, not a single state has been permitted to opt in to the AEDPA's system of expedited capital appeals. Two years after passage of the AEDPA, death-penalty appeals in the federal courts remain as protracted as ever.

THE uniformity and alacrity with which federal judges across the country have declared their states in conflict with the AEDPA suggest a broad-based judicial animus. Federal courts in California, Pennsylvania, Washington, Ohio, Maryland, Florida, Virginia, and Tennessee have deep-sixed those states' requests to opt in to the act. Pennsylvania, bowing to judicial opposition, threw in the towel by freely stipulating in court that it did not satisfy the act's requirements.

Nowhere has the judicial bias against the AEDPA been more transparent than in *Ashmus* v. *Calderon*, a California case. The case was heard by federal Judge Thelton Henderson, best known as the author of the ruling last year that the California Civil Rights Initiative violated the equal protection clause of the Fourteenth Amendment. Not only did Henderson declare that California fell short of qualifying for the "benefits" of the AEDPA (he placed the term "benefits" in derisive quotation marks), he issued an order forbidding California even to argue in court that it was in compliance with the act.

Henderson also accused California of improperly "threatening" to invoke the act—simply because the state had claimed in court that it met the act's requirements. "Defendant's statements," Henderson opined, "leave little room for doubt that, absent judicial relief, they will continue to make such threats and assertions." The Ninth Circuit upheld Henderson's ruling in almost every particular. California has appealed the decision to the U.S. Supreme Court, arguing that, at the very least, the First Amendment gives a state the right to argue in court that it has complied with the act. The high court granted certiorari and heard oral argument on March 24.

The uniformity and alacrity with which federal judges across the country have declared their states in conflict with the AEDPA suggest a broad-based judicial animus.

Other judges have been less strident than Henderson, offering instead an assortment of state-specific reasons for turning down opt-in requests. The dominant theme is that the states have failed to provide counsel that the courts deem competent. At first blush, this might seem an appropriate and even laudable reason for judicial resistance. But judges have used a narrow and perhaps self-interested definition of "competent," in some cases requiring specialized expertise in habeas appeals. This restricts the pool of qualified counsel to the point where states can have trouble fielding enough attorneys to handle their capital caseloads.

Congress bears its own share of responsibility for this judicial foot-dragging. The language of the AEDPA is what has given judges their wide discretion, particularly the act's failure to define key terms such as "competent." Moreover, by imposing a myriad of new requirements on those states wishing to opt in, the AEDPA reveals something even more disturbing: a lack of congressional trust that the states can and will provide adequate counsel absent micromanagement from the federal judiciary. If federalism means anything, surely it means that the states should be permitted to run their own criminal-justice systems.

In fairness to Congress, it inherited a jurisprudential mess when it grappled with this habeas situation. The federal courts had piled penumbra atop emanation in manufacturing and defending a dubious right to "effective" assistance of counsel on appeal (the right was minted in 1985 in the Supreme Court case of *Evitts* v. *Lucey*). But instead of picking a deserved fight with the judiciary on a questionable right of recent vintage, Congress punted.

It is not too late for Congress to correct these flaws. It should repeal the AEDPA's requirements so that the states may benefit from the act's death-penalty reforms without being saddled with vague, expensive mandates. The states should be trusted once again to hire qualified counsel for capital appeals without supervision by the same federal judges the AEDPA is meant to curb. Condemned petitioners, of course, may still file habeas appeals with the assistance of counsel—but the courts will be taken out of the business of deciding what is "competent" counsel. When the Democrats and the courts complain, the Republicans can properly point to the judicial obstruction of the AEDPA to date.

They might also note that hardened murderers on death row have been able to avoid execution for more than a decade on average in large part because their advocates are quite competent indeed—seated on the bench, with gavels in hand. □

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Soccer-Mom Hell

Soccer is a sport for bureaucrats, socialists, and overbearing mothers. Stop the madness.

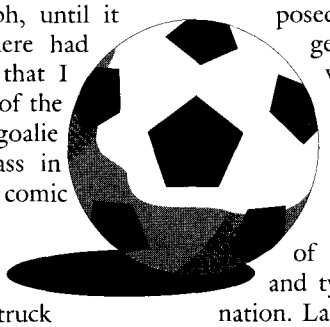
STEPHEN MOORE

AFTER watching the first two soccer games of my six-year-old son, Justin, this spring, I finally understand why Europeans riot at soccer matches. For the same reason inmates riot in prisons: sheer boredom.

There is no surer sign of the decline of America's culture than the craze over this awful European sport. Drive past a park or a schoolyard on a clear spring afternoon and you're likely to witness a depressingly unpatriotic sight: the baseball diamond lies empty and crab grass grows in the infield, while herds of American children dressed in preposterous polyester uniforms run around kicking a white and black ball in no particular direction and to no apparent end.

Soccer at any level—from six-and-under peewee leagues to the pros—is about as scintillating as ninety minutes of Court TV. Soccer is reminiscent of ACC college basketball games in the pre–shot-clock era when halftime scores were in the single digits: North Carolina 9, Virginia 7. (What is it they used to say about Dean Smith? The only man who ever held Michael Jordan to less than 20 points a game.)

Soccer is the least offensive-minded game ever invented. Last year the goalie on Justin's team recorded five straight shutouts. This seemed to me to be an awesome athletic triumph, until it dawned on me that there had been no shots on goal that I could recall. By the end of the season our superstar goalie began to lie in the grass in front of the net and read comic books during the games.



During the second period of one game last year a Good Humor truck drove by the park. On hearing the tinkling of the bells half our players awoke from their slumber and scrambled from the playing field in joyous pursuit. Meanwhile, on the field, the game relentlessly continued. For more than five minutes our opponents commanded the equivalent of a five-man power-play advantage and they *still* couldn't score.

No other activity in life requires so much effort for so little reward. Ninety-nine per cent of the action has virtually no bearing on the outcome of the game. Herein may lie the explanation for why so many of my government-bureaucrat neighbors in the suburbs of Washington, D.C., have a love affair with soccer.

In soccer, every mother's child is above average. There's no shame in losing and a tie is the likely outcome. The game's egalitarian philosophy extends to the absurdity of giving *every* kid a trophy at the end of the season.

I am convinced that the ordeal of soccer teaches our kids all the wrong lessons in life. Soccer is the Marxist concept of the labor theory of value applied to sports—which may explain why socialist nations dominate in the World Cup. The purpose of a capitalist economy is to produce the maximum output for the least amount of exertion. Soccer requires huge volumes of effort but produces no output.

What makes peewee soccer particularly insidious is that boys and girls play together. At this level, the sport has become a giant social experiment imposed upon us by the same geniuses who have put women in combat. No one seems to care much that coed soccer is doing irreparable harm to the psyche of America's little boys.

At this pre-puberty state of life girls tower over boys and typically have better coordination. Last year the Pelé of my son's league was a kindergartner named Kate Lynn. During one game, Kate Lynn repeatedly stampeded over Justin. After the third knockdown, I quietly pulled him aside and advised: "Remember that rule about never hitting a girl? Let's suspend that for the next forty minutes." But he never did, because she was likely to hit back.

If the girls are bad, the moms are worse. They berate the referees. Taunt opposing players. Nag the coach unmercifully to put their no-talent kid back in. One woman paced the sidelines through an entire game in a wild-eyed frenzy, screaming: "Jeffrey, Jeffrey, Jeffrey . . ." My kingdom for a muzzle. Once the game had mercifully ended she smothered him with hugs while cooing: "Oh, Jeffrey, you are soooo good at soccer." Take my word for it, Newt, the Republican Party is much better off without these women. If she's in, I'm out.

During games, I usually stand mute on the sidelines reading the newspaper. My refusal to feign interest is a source of great irritation for the more fanatical soccer moms. They now whisper disapprovingly among themselves: "Oh, that's Justin's dad. He has an attitude problem." They regard my lack of enthusiasm as a form of child abuse. Next they'll be notifying the child-welfare league about me.

There had been no shots on goal that I could recall. By the end of the season our superstar goalie began to lie in the grass in front of the net and read comic books during the games.

So the issue of the day is whether we Americans will muster the forces to take back our culture from the un-American soccer enthusiasts. We need to channel our kids' energies into more productive activities: baseball, football, tennis, MTV—even smoking would be an improvement.

Soccer is draining America of the next generation's talent in the sports that really matter. Charles Barkley recently warned that within the next three Olympics the Europeans will be competitive with the U.S. Dream Team. When Sweden beats our top stars in basketball, Americans will assuredly awaken from their slumber. But by then it will be too late. □

Mr. Moore is a contributing editor to NR.

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Necessary Gateskeeping . . .

Does antitrust law protect consumer welfare, or punish the firms consumers prefer?

DANIEL OLIVER

THE Department of Justice is pursuing Microsoft on antitrust grounds, and a number of conservative writers and organizations have gone to Microsoft's defense, including the *Wall Street Journal*, Jack Kemp, Adam Thierer of the Heritage Foundation, Thomas Sowell—and NATIONAL REVIEW. They proclaim that the free market is a better protector of consumer welfare than government; and their visceral distrust of government activity is welcome in this post–the-era-of-big-government-is-over era. But for antitrust cases, which are complex and fact-specific, the head is a better guide than the viscera.

The charges against the Justice Department's lawyers are familiar—and all the more persuasive because government lawyers have certainly been guilty of such things in the past. They are accused of arrogant industrial planning, micromanaging, trying to second-guess the market and pick winners, supporting Microsoft's competitors rather than competition, and going off on a leftward regulatory lurch. However, even if all those charges against the Justice Department were true, there could still be a case against Microsoft that would benefit consumers.

The central problem the critics of the Justice Department have to deal with is that Microsoft probably has "market power"—or the ability to threaten consumer welfare. (Market power is determined by looking at market share and a company's ability to maintain it.) Microsoft has approximately 90 per cent of the world market for PC operating systems. In a large market—the world—90 per cent is huge.

Bill Gates by Roman Genn

But the critics are reluctant to concede the importance—or even the existence—of Microsoft's large market share. One critic claims the appropriate market in which to measure Microsoft's share is the entire $570-billion computer industry, of which Microsoft controls only a small portion. Alternatively, he suggests that the appropriate market is all software, of which Microsoft produces only 4 per cent. In antitrust, whoever defines the market controls the debate. If you define the market broadly enough, no one company will ever seem to have enough power to harm consumer welfare.

Some of the Justice Department's critics maintain that Microsoft's large market share is irrelevant by claiming that barriers to entry into the software business are low, and that we can expect competitors to come along and unseat any incumbent monopolist.

The software industry, however, is characterized by extremely low marginal costs. Unlike the second automobile off an assembly line, the second copy of a new software program costs virtually nothing to produce—which gives established companies a tremendous advantage over their competitors. In addition, what economists call "network effects" make entry into the software business difficult. The more people there are who use a particular computer system, the more valuable that system will be—and the more difficult it will be for the producer of a new product to get it accepted by the "installed base" of consumers using both the established product (the operating system) and the ancillary products (software written for that system). The unprecedented economies of scale resulting from low to no marginal cost for production combined with network effects make the "natural" barriers to entry into the software market substantial.

The fact is, Microsoft seems to have a monopoly (i.e., market power), and that should be a source of concern to consumers—not because Bill Gates might turn out to be an evil genius, but because he will be inclined to behave like—a monopolist.

Microsoft may have earned its monopoly in operating systems by providing a product preferred by most customers. But can we say the same thing about its share of, say, the word-processing market? In 1995, WordPerfect was the most popular word-processing program, with 60 per cent of the market. Today WordPerfect is down to 13 per cent, and Microsoft's MS Word has about 80 per cent. That's a remarkable shift of consumer preferences.

How did Microsoft do it? Did consumers find it difficult to run WordPerfect on Microsoft's operating system? Suppose, hypothetically, that Microsoft used its monopoly position in operating systems to make WordPerfect work less

Mr. Oliver, chairman of Pacific Research Institute for Public Policy in San Francisco, was chairman of the Federal Trade Commission from 1986 to 1989.

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perfectly, with the intention, and result, of driving people from WordPerfect to Microsoft's own word-processing product. It shouldn't take a left-winger to spot the consumer harm. Consumers would be denied real choice.

THE point is not that Microsoft has misused its position, but that if Microsoft is in a position to misuse its position, consumers, and their champions at the Justice Department, should be concerned.

The current concern is that Microsoft might use its position in the operating-systems market to: 1) monopolize access to Internet content; 2) monopolize the market for web browsers; or 3) maintain its current share of the operating-systems market by making sure that other web-browser products will not, when combined with Internet applications, amount to an alternative operating system. If Microsoft succeeds in any of those endeavors, consumers will be harmed by not being free to choose other products.

Bill Gates "scoffs" at rivals' charges of anti-competitive behavior and "bristles" at the mention of the word monopoly. But the evidence suggests that Microsoft has routinely engaged in sharp-elbow practices that seem designed to preserve or extend its monopoly. Under repeated questioning at a Senate hearing in March, Gates finally conceded—for the first time publicly—that Microsoft puts restrictions in its contracts that bar some of the websites featured in its Internet software from promoting Netscape or being included in Netscape's rival listing. Microsoft has also required computer manufacturers to pay license fees for products even if they didn't install them. Once they have paid for the Microsoft product, they will have less incentive to pay for a competing product. That makes it more difficult for competitors to sell to the computer manufacturers.

The Justice Department's action is designed to assist competition and innovation. A software geek with a new idea, or the investors he goes to for seed capital, may rightly fear that, even if he can get to production, his product will be duplicated by Microsoft and then bundled into its operating system. While he might develop property rights that would be protected by the intellectual-property laws, he is not likely to have the cash to assert those rights against monopoly-rich Microsoft.

There are three policy options for dealing with monopolies: outlaw all monopolies; allow monopolies to function completely unfettered; or allow monopolies to exist but with some limitations on what they can do. U.S. public policy has selected the third option in the belief that it will produce more consumer welfare than the others.

Objecting to the Microsoft case is tantamount to saying we shouldn't have any antitrust laws at all.

If ever there was a case that raised consumer-welfare issues, this would seem to be it. Microsoft has a 90 per cent share of a world market; there are reasons to think that share will endure; Microsoft has engaged in restrictive practices; and many of those practices do not appear to have any efficiency justifications that would benefit consumers rather than the company. Where you find a dead body, a bloody knife, fingerprints, and a motive, there may have been a crime.

Objecting to the Microsoft case is tantamount to saying we shouldn't have any antitrust laws at all. That may not be intellectually scandalous, but it is certainly a minority position, and not the position of the Chicago School or the people who served in the Reagan Administrations—or even one dictated by common sense. □

Or Broken Trust?

D. T. ARMENTANO

MOST economists support antitrust law because their theories teach that monopolies misallocate resources and reduce economic welfare. In addition, many economists share the view expressed by Sen. Orrin Hatch (R., Utah) in regard to the Microsoft case: that antitrust is a less dangerous antidote to the monopoly problem than, say, utility-style regulation. Thus, they accept antitrust as a reasonable governmental policy that occupies the middle ground between complete laissez-faire and a more "heavy-handed" regulatory apparatus.

But the reality is that antitrust's basic theories are faulty or irrelevant and its alleged case evidence nonexistent. The reality is that private and political interests often drive antitrust enforcement and shape its final judgments.

Microsoft's decade-long difficulties with the antitrust authorities illustrate the laws' fundamental defect: successful firms that innovate and lower prices—and that meet with overwhelming consumer acceptance of their product—are the primary antitrust targets. Indeed, the more successful the innovation, the greater a firm's antitrust liability. Since enthusiasts for antitrust agree that its only legitimate mission is to improve consumer welfare, the screaming contradiction is that the laws punish firms that improve consumer welfare.

But then, antitrust laws generally were never meant to promote the competitive process; they were meant to protect competitors and inefficient market structures. Antitrust is a lot like protectionism in international trade: since efficient business organizations always threaten less efficient ones, shelter from the storm is sought in antitrust law. That's why more than 90 per cent of all antitrust litigation is private, one firm suing another. The glee of Microsoft's rivals in the current dispute fits precisely this understanding of antitrust.

A more fundamental problem lies in the theory of monopoly which rationalizes the laws. That theory basically assumes that a monopoly (or a firm with "monopoly power") can restrict production, increase prices, and operate inefficiently relative to some competitive firm. This is why society objects to monopoly power and passes legislation to restrict it.

But as Joseph Schumpeter noted decades ago, orthodox monopoly theory is inherently static and takes no direct ac-

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count of the dynamic process of innovation—of its actual sources or its overall beneficial effect on society. New products and new technologies are often developed by dominant firms or by firms that will grow to be dominant. If the benefits of innovation are overwhelming and the risks of output restriction small, then antitrust law is a bad bargain for society.

Besides, textbook monopoly theory, strictly speaking, really applies only to monopolies created and protected by government power. Only *legal* monopolies can restrict production, raise prices, and repress innovation with impunity, knowing that government will bar the door to more efficient rivals. When Adam Smith condemned monopoly, he mostly had inefficient state-sanctioned monopoly in mind. (He also rejected antitrust law as inconsistent with "liberty and justice.")

Free-market business organizations face entirely different incentives and behave very differently. They must continually expand their production, reduce costs and prices, and successfully innovate; else they lose their customer base and market position. In short, they must engage in precisely the sort of behavior that we associate with rivalry and competition. To call these organizations (whatever their alleged market share) "monopolies" and then to punish their superior performance with regulation is to turn the alleged intent of antitrust law upside down.

BUT what of the concern that dominant firms exclude competitors and thus stifle competition—a key complaint against Microsoft? Don't dominant firms have economic advantages that create barriers to the entry of newer firms with new technologies? And isn't this a restraint of trade that antitrust regulation should address?

Yes, successful business organizations can have advantages that may exclude particular competitors and make market entry difficult for new firms; but, no, this is emphatically *not* a problem that requires any trustbuster meddling.

Competition is not a matter of reaching equilibrium in some arbitrarily defined market; it is an open-ended process of discovering the most efficient means of meeting consumer demands. The most efficient means may involve many firms, or few, and may involve cooperation as well as rivalry, depending on the characteristics of the market in question. Thus the entry of new firms into a market may not "increase competition" but waste resources. A high cost of entry, then, is simply a sign that a firm *deserves* to be excluded from the market; the existing market structure better serves consumers.

Some critics assert that dominant suppliers can leverage their "monopoly power" from one market to another and thereby injure consumers. This fear, too, is misplaced. Assume that a dominant firm has two products to sell. The first product is very important to consumers and they're willing to pay dearly for it. If the firm is already charging the highest price consistent with maximizing its profits, then by logic it cannot charge more than a competitive price for the other product. Indeed, the dominant firm may even give away the second product. This action may exclude companies that might wish to offer a higher-priced version of the second product, but it does not unfairly exclude competitors or injure consumer welfare.

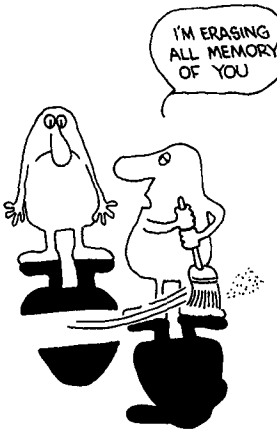
Unfortunately, the antitrust authorities have not always agreed. Almost all the landmark anti-monopoly cases, from Standard Oil to IBM, involved dominant firms (none were monopolies) that rapidly innovated and lowered prices to consumers. In *Alcoa* (1945), the Supreme Court determined that Alcoa's "superior skill, foresight, and industry" were exclusionary of less efficient firms. In *United Shoe Machinery* (1953) it was decided that United's "long line" of superior shoe machines and low leasing rates illegally excluded higher-cost rivals. In *Procter-Clorox* (1967), the FTC and the Supreme Court agreed that a merger "so productive of efficiencies" would heighten the barriers to entry into the bleach industry and exclude potential competitors. And the list goes on.

The screaming contradiction is that the laws punish firms that improve consumer welfare.

Antitrust enthusiasts are forever apologizing for this history of silly cases while constantly inventing "new" theories of enforcement that lead to still more silly cases. The currently fashionable "new" theories—actually recycled from decades earlier—attempt to justify regulation of the computer software market by invoking "increasing returns" and "economies of scale." Larger firms have unfair advantages over smaller firms, goes the argument, because larger outputs (or larger numbers of users or larger networks) lead to enhanced consumer benefits or lower costs.

Of course network effects can create demand-side advantages for larger firms and increasing benefits for their customers. And economies of scale can provide cost-side advantages for larger firms and make it difficult for smaller firms to compete. But there is nothing economically unfair about any of this.

In the first place, increasing returns and low marginal costs are no guarantee of long-term success; business history is filled with "first mover" firms (IBM, Apple) that dramatically lost market share because of changes in consumer tastes and in technology. Secondly, low costs and increasing advantages for consumers are the *benefits* of the competitive process; why regret them? Competition is *supposed* to generate low costs and increasing benefits for consumers and to punish low-value and high-cost rivals. The competitive process is *supposed* to reward firms that innovate first, that build integrated systems, and that expand before their rivals do.



One reason trustbusters are forever tilting at windmills is their obeisance to a textbook model of "pure competition" that places inordinate importance on the number of competitors and condemns firms with large market shares. The theory is irrelevant in real-world situations, but its analysis of "competitive" behavior still dominates—and confuses—antitrust law. Antitrust is doubly cursed: its theories of competition and of monopoly both tend to lead regulators astray. Neither should be dragged into the twenty-first century. □

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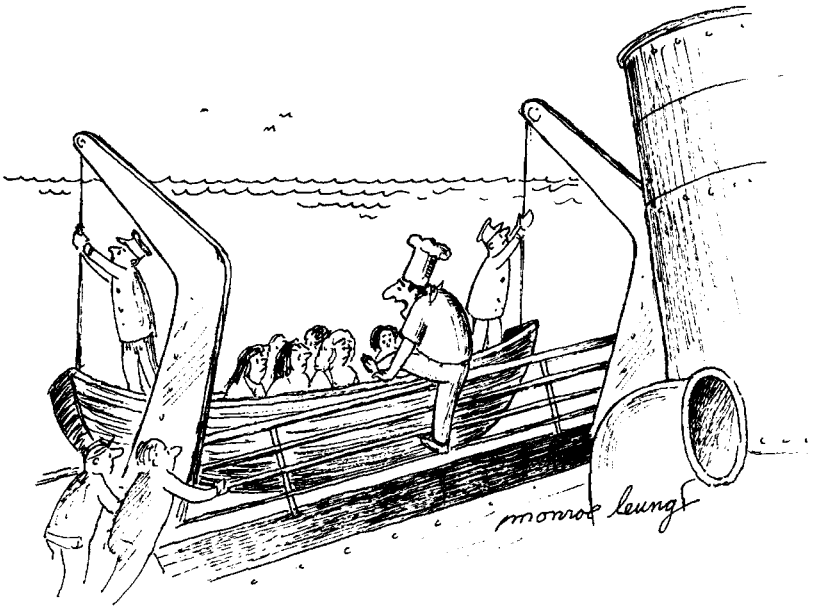
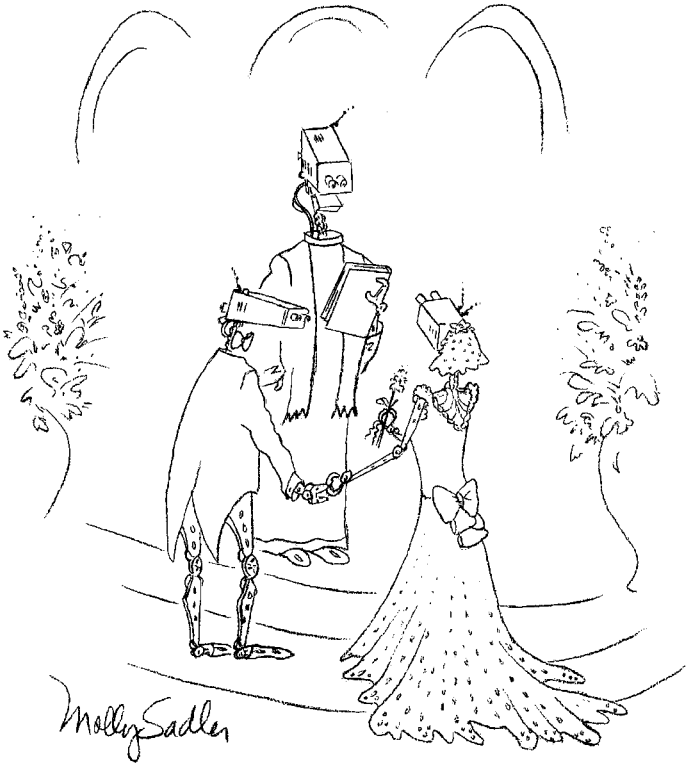


"He's still in the galley—drying the dishes!"

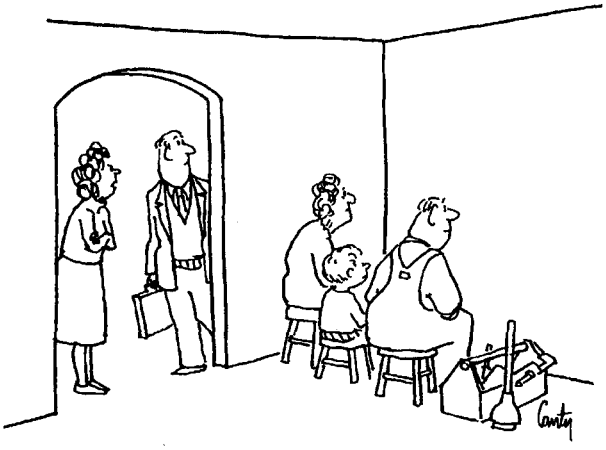
The Long View

When they broke Pandora's box,
Letting out all kinds of pox
Till the Greeks (who else?) threw up,
Choking on a hemlock cup;
They discovered all that sin
Was a bitch to stuff back in,
As Savonarola found
When he fought a later round.

—W. H. von Dreele



"We are reminded in the second law of thermodynamics that the entropy of two systems joined together is greater than the sum of the entropies of the individual systems."



"What a day!"

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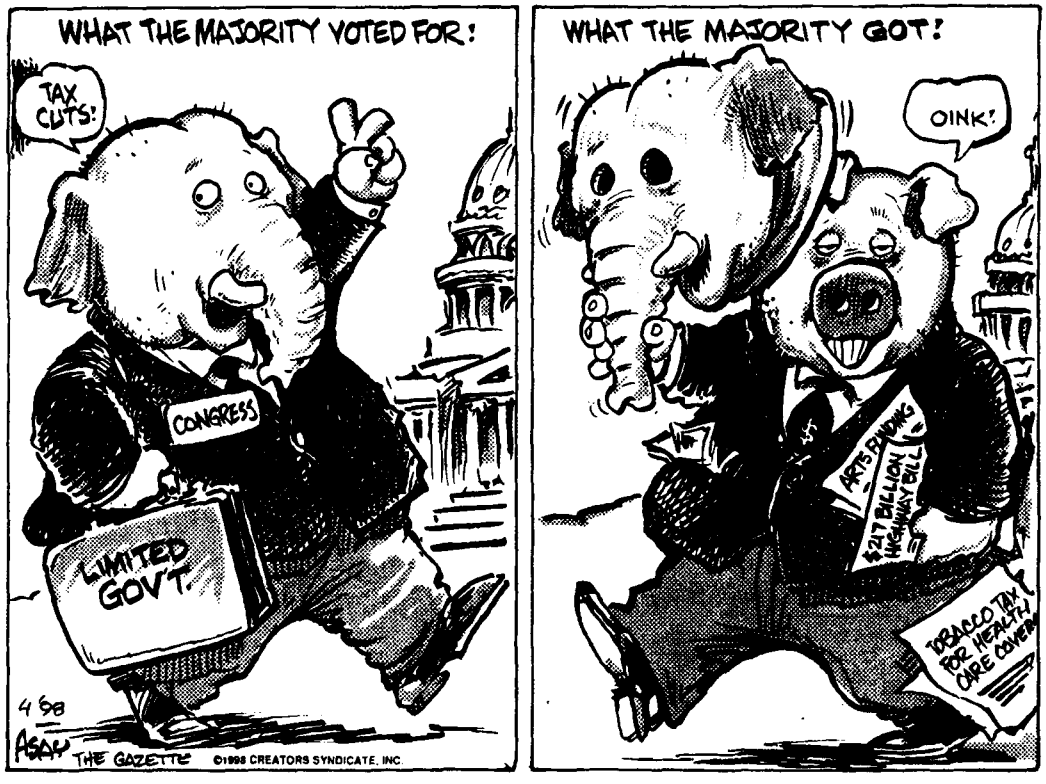

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THE VICE PRESIDENT
WASHINGTON

OFFICIAL TRANSCRIPT
OFFICE OF THE VICE PRESIDENT
TELEPHONE LOG: 13 APRIL 1998
BEGIN TRANSCRIPT 09:37

VPOTUS: Rusty? Rusty, can you hear me? [Static.] I'll have to talk to you later, Rusty. I can't understand a word you're saying. If I didn't know better, I'd say my phone was tapped. [Laughter.]

END CALL
BEGIN CALL 09:46

UNIDENTIFIED MALE VOICE: Hello, Mr. Vice President.

VPOTUS: Yeah, hi, Paul.

SEN. WELLSTONE: Hey, I just wanted to let you know that just because I've announced that I'm running for the nomination, that, you know, that we can still work together on stuff.

VPOTUS: Yes, well . . .

SEN. WELLSTONE: Oh, man, you're mad, aren't you? You're totally mad at me, aren't you?

VPOTUS: What makes you think that?

SEN. WELLSTONE: Well, for one thing you're talking real slow.

VPOTUS: That's not—

SEN. WELLSTONE: Look, I'm going to be running a grassroots campaign. Just totally reconnecting this party to its traditional roots.

VPOTUS: Graduate students?

SEN. WELLSTONE: Exactly!

VPOTUS: You know, Paul, it's good to have an exchange of ideas. It's good for the party to hear from its far left wing and from its center. I've been trying to do that for years, all by myself.

SEN. WELLSTONE: I'm so glad to hear you say that.

VPOTUS: Good luck, Paul. I mean that.

END CALL.
BEGIN CALL 09:51

VPOTUS: Hi. Could you please leave a message for Elaine? Tell her that in our next fundraising letters we should use the line "Do we really want to turn the party over to the far left?" and "Senator Wellstone's far-left agenda would return the party to the days of," whatever whatever Okay? Thanks.

END CALL.
BEGIN CALL 10:46

VPOTUS: Congratulations, Senator.

UNIDENTIFIED MALE VOICE: Thanks, Al. It's been a long road, I'll tell you.

VPOTUS: I know. Both the President and I know how long and hard you've worked on this. Peace in Ireland is so important, especially to New York. Massachusetts, too, but that's kind of a mulligan.

SEN. MITCHELL: You know, the President is coming to Belfast in May to sign the agreement. You know that, right?

VPOTUS: I knew that. Of course I knew that. He and I confer almost every—well, the point is, I knew about it. In fact, I might join him.

SEN. MITCHELL: Really?

VPOTUS: Yeah, you know, see the ancestral homeland, reconnect with the roots.

SEN. MITCHELL: "Gore" is an Irish name?

VPOTUS: "O'Gore" originally. Look, George, I'll be honest with you. It would be great for me to be involved in this peace agreement. I'm going to be running pretty hard for the next year or so—

SEN. MITCHELL: C'mon, Al. So far, your only opponent is Paul Wellstone.

VPOTUS: Hey, he's got a lot of grassroots support.

SEN. MITCHELL: So did Pat Paulsen. C'mon, Al.

VPOTUS: I'm just saying that a person associated with a peace agreement of this gravity would have a leg up in a presidential campaign.

SEN. MITCHELL: I know. Believe me, I know. That's all I've been thinking about for the past week. You're right about Massachusetts. But New York State's a pretty big prize.

VPOTUS: You're too old, George.

SEN. MITCHELL: I'm only 61, Al. I'm seasoned. I'm experienced. Plus, I have a newborn son to keep me youthful.

VPOTUS: Voters will think it's weird that a guy your age has a little baby.

SEN. MITCHELL: I can see the headline in the Post now: "Mitchell, respected legislator and peace broker, throws hat into ring." I like the sound of that.

VPOTUS: Get real, George.

SEN.MITCHELL: And the subhead: "Untainted by scandal." I really like that. See you around, Al.

END CALL.
BEGIN CALL 10:53

VPOTUS: Hi. Could you please leave another message for Elaine? Tell her that in our next fundraising letters we should use the phrase "over-the-hill retired legislator" and "odd personal life." Thanks.

END CALL.

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BOOKS, ARTS & MANNERS

Material Guy

GERALD L. SCHROEDER

I OFFER the following recollection strictly in a spirit of modesty: Four decades before I first encountered the word in the title of Edward O. Wilson's new book, I had discovered consilience—or, anyway, noticed it at work. Professor Wilson of Harvard—famed biologist, twice winner of the Pulitzer Prize, and author of the acclaimed book *The Ants*—chose the word for his title because "its rarity has preserved its precision." Using the nineteenth-century philosopher William Whewell as his source, Wilson defines consilience as "a 'jumping together' of knowledge by the linking of facts and fact-based theory across disciplines to create a common groundwork of explanation." He seeks consilience of knowledge. The consilience I had noticed was in nature.

As a child I tended our family orchard. A tree moves through time as a helix, the seasons sweeping it with cyclical regularity, each season affecting the tree in its own fashion: in the autumn its leaves fall, in the spring they return, and so on and on. Yet simultaneously the tree grows and ages, as all living things do, in a one-way linear movement through time. The straight line defining growth and age, combined with the helix pattern of the endlessly repeating seasons, forms the harmony of a tree's life. That harmony hinted to me of a transcendent unity underlying all life. Hence, consilience: observing the natural leads inevitably to an appreciation of that which transcends nature. "The heavens declare the glory of God, and the firmament proclaims his handiwork" (Psalm 19:1).

Consilience: The Unity of Knowledge, by Edward O. Wilson (Knopf, 352 pp., $35)

Wilson's *Consilience* is a plea to mankind to search out the intrinsic unity that binds all knowledge. If the search is to be pursued, Wilson tells us, the academic community must take the gift of twentieth-century science, the diverse and detailed body of knowledge describing the physical world, and apply it to the humanities. The merging of science and the humanities is "the greatest enterprise of the mind" he can imagine.

Frederick H. Carlson

According to Wilson, it may well be crucial to humanity's ultimate survival.

Although one can only applaud the aim of unifying all knowledge, any scientifically informed reader, as he works his way through this book, will feel increasingly underwhelmed. In particular when Wilson is describing threats to life on earth, the science he presents is sophomoric, something like a mix of newspaper science articles with a smattering of *Scientific American*. Anyone who reads the popular press will have heard time and again that 65 million years ago a meteor abruptly ended the age of the dinosaurs, that tropical rain forests are disappearing, that a population explosion in the Third World endangers civilization, etc., etc. One hardly needs Professor Wilson to recount all this for us.

He has some slightly fresher things to say about the origins of morality and concepts of ethical behavior. "Ethics is everything," Wilson informs us, and who will argue with him? If we can understand where our ethical notions come from, he contends, the human race will be in a better position to direct its destiny. The need to do so is urgent. Western philosophy, steeped in moral relativism, has "left modern culture bankrupt of meaning," while theology is "still encumbered by precepts based on Iron Age folk knowledge." This state of affairs, we learn, has come about "because people resist biological explanations of their higher cortical functions."

For Wilson, an ardent materialist, unifying the humanities and the natural sciences will inevitably lead to "the biological exploration of the moral sentiments," confirming the "hypothesis that every mental process has a physical grounding and is consistent with natural sciences." He believes that morality is simply a product of evolution, a more developed version of a survival instinct that originated in our animal ancestors. If social scientists would only use the hard-earned knowledge that biologists and geneticists have gleaned over the past several decades to describe in greater detail the biological roots of morality, Wilson feels, we would then understand the causes of, and could discover the remedies for, society's ills.

To illustrate what he means, Wilson argues that in the genome of many animals, human beings included, there must be genes for altruism. This trait becomes dominant in a population if altruistic behavior increases the odds of the population's physical survival.

Mr. Schroeder is the author most recently of The Science of God *(Free Press).*

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There are two problems here. One is that, if Wilson is right in his thinking about morality, widespread understanding of its biological origins will hardly stem the rise of moral chaos which he fears. Ethical ideals are not made more compelling by the belief that those ideals lack a transcendent basis—that they come not from God but from the genome. The other problem is that Wilson fails to convince us that every mental process can be explained in material terms.

On the contrary, he describes a number of scientific discoveries which, as he himself admits, suggest that existence must possess a dimension beyond the merely material. Among these is the growing recognition of "the unreasonable effectiveness of mathematics in the natural sciences. For reasons that remain elusive to scientists and philosophers alike, the correspondence of mathematical theory and experimental data in physics in particular is uncannily close." Especially when describing developments in quantum mechanics and biology, Wilson makes as good a case for a religious understanding of the universe—with a transcendent, active Creator—as he does for a secular one.

A critique of materialism might well cite the life of Professor Wilson himself. I have the impression that his aggressively secular outlook is less the result of his genes than it is an emotional response to experiences in his youth. Raised as a fundamentalist Southern Baptist, he felt "released from the confinement" of his faith when, at college, he learned about evolution. After all, he reasoned, if the Bible were really the word of the Creator, how could it leave out such a crucial fact as evolution?

But on this, let us set the record straight. Notwithstanding statements by misguided clerics, the Bible is well aware of the development (or evolution) of life. In Genesis 1:21–27, it states that simple aquatic animals were created, followed by land animals, mammals, and finally humans. This is the same sequence found in the fossil record, though of course that record offers more detail than will a few Biblical verses. The Bible makes no claims as to the forces that drove these developments. That it leaves to science to discover. As for pre-human beings—cavemen—the Talmud's commentary on Genesis, written down 1,500 years ago, is replete with descriptions of hominids having the same shape and intelligence as human beings but lacking the essence of what it means to be human: a soul.

The Bible does not contradict modern science. However, the neo-Darwinian theory of evolution (random mutations retained or discarded owing to pressures of the environment) is unscientific in several respects. Doubts about that theory surfaced with the discovery of fossils indicating that life on earth appeared almost four billion years ago, immediately after the molten globe had cooled and liquid water formed. The notion that life gradually evolved over billions of years in some nutrient-rich pond could at that point no longer be sustained. How life arose so rapidly remains a mystery. Subsequent fossil discoveries revealed that an explosion of diverse life forms during the Cambrian era, some 600 million years ago, simultaneously brought into existence every basic body plan that has ever existed. (See Genesis 1:20–21.) And finally there is the absence of many key transitional fossils. It is not by chance that in his *Origin of Species* Darwin repeatedly (seven times, by my count) implores us, if we wish to understand the evolution of life, to disregard the fossil record. In this he is seconded by many of those who study evolutionary biology today. The evidence for an evolutionary process driven by randomness certainly is not more convincing than the indications of a divinely set telos in life's flow.

Notwithstanding statements by misguided clerics, the Bible is well aware of the development (or evolution) of life.

In a debate Wilson imagines between himself and a theist (one who regards God as being active in the universe), the author demonstrates how woefully narrow is his understanding of Biblical theology. His sophistication as a reader of the Bible appears to have frozen when he was a pre-college teenager. Matched against the sophisticated mind of an adult, of course the Bible of Wilson's memory seems naïve.

Having rejected his Biblical roots, Wilson turned to what he refers to as the "Ionian Enchantment." In Greek thought he learned about "the unity of nature." If Wilson understood the Bible as well as he does Aristotle, he would know that the idea of a unity underlying all existence and hence all knowledge was described a thousand years before the Ionians got around to it. "The Lord is one" is the most important statement in the Bible, for Jews (Deut. 6:4) and Christians (Mark 12:29) alike. The point is not merely that there is only one God. Rather, that simple phrase is the closest we can come to perceiving that the infinite, eternal Whatever which we call God is an all-encompassing unity. Jewish mysticism juxtaposes the phrase "the Lord is one" with another verse in Deuteronomy: "You shall know this day, and lay it to your heart, that the Lord, He is God in heaven above and upon the earth beneath; there is none else" (Deut. 4:39). In the Biblical view, everything, stars and space and life itself, is a manifestation of a single Wisdom. There is nothing else.

It took millennia for scientists to confirm that the basis of matter is energy, that matter is actually condensed energy. It may take a while longer until we discover that underlying all existence is Wisdom—or, in the words of the physicist John Archibald Wheeler, former president of the American Physical Society, an idea. When we have learned that idea and found its source, then Edward O. Wilson's dream of consilience will have come true. □

The Sucker Gene

FLORENCE KING

WOMEN'S studies is truly phenomenal, something like parthenogenesis. In 1957 *The Lunatic Fringe* by Gerald W. Johnson contained a chapter about Victoria Woodhull, but now she gets regular full-length biographies. I reviewed one three years ago, and two more have been published so far this year.

Instead of a life-of, Barbara Gold-

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smith's *Other Powers* is a life-and-times. She expanded it, she explains, because not placing Victoria Woodhull in historical context would make her seem "merely eccentric and even aberrant." Sorry, but Victoria Woodhull is eccentric and aberrant any way you slice her. What makes this book work is the way it places *us* in historical context. From the nineteenth century's version of the Psychic Network to the sexual predations of the Rev. Henry Ward Beecher,

Other Powers: The Age of Suffrage, Spiritualism, and the Scandalous Victoria Woodhull, by Barbara Goldsmith (Knopf, 531 pp., $30)

the story of Victoria Woodhull is the story of Bill Clinton's America.

Victoria Claflin was born in Homer, Ohio, in 1838 to a mother who fell into trances and a father who brewed "Life Elixir" from corn whisky, laudanum, and molasses and sold it to the yokels. A deep vein of con artistry ran in the family. Deciding that Victoria and her sister Tennie were clairvoyant, Buck Claflin took them on the road, billing five-year-old Tennie as "The Wonderful Child." Soon she was the golden goose; when word spread that she had correctly predicted a fire and told a farmer where to find his lost calf, people flocked to her to have their fortunes told and their futures predicted.

Though set in the nineteenth century, the story of Victoria Woodhull is the story of Bill Clinton's America.

Victoria, who had real intelligence as well as street smarts, was harder to handle. All Buck wanted was a carnival performance but she went into deep trances and transfixed customers with riveting stares from her oddly slanted pale blue eyes. She predicted a shipwreck to the exact moment but she was far more interested in predictions about herself, as when her favorite spirit, Demosthenes, told her, "Your work is about to begin."

At 15 she married a drunk, Dr. Canning Woodhull, who moved to California for the Gold Rush; when that didn't pan out the resourceful Victoria took to the stage and part-time prostitution in San Francisco until her spirits told her to go home. Back in Ohio, she found that Buck's miracle cancer cure—mutton fat and lye—had burned off a woman's breast and Tennie had been indicted for manslaughter. Another sister, Utica, had become addicted to the Life Elixir she had helped brew and was now a nymphomaniac.

The family fled to Chicago where Buck ran a brothel for his younger daughters, blackmailing their clients by pretending to be the distraught father of a ruined virgin. Victoria set up shop as "Madame Holland," curing female complaint with mesmerism. Colonel James Blood brought his wife to be cured, only to fall under Victoria's spell himself. They ran away together and were soon joined by Tennie in New York, where they went after America's richest mark: Commodore Cornelius Vanderbilt, who believed in spiritualism.

The spiritualist craze had begun when the invention of the telegraph in 1842 made invisible energy commonplace and respectable. Civil War deaths provided a lot of spirits to contact, and disfranchised women embraced spiritualism as their only source of power: suffragist Elizabeth Cady Stanton, who wrote the Declaration of Women's Rights on a séance table used by the Fox sisters, was a believer; so were Mark Twain and Mrs. Horace Greeley.

Bamboozled by Victoria, who massaged his psyche, and Tennie, who aimed lower, Vanderbilt staked them to a brokerage for women investors. Aided by his stock tips, they made a fortune and attracted Susan B. Anthony, who persuaded Victoria to join the woman's suffrage movement. It wasn't hard to do: convinced that this was the work the spirit of Demosthenes had meant, she started a newspaper, *Woodhull & Claflin's Weekly*, to promote the cause—i.e., herself. It was through her contacts with suffragists, especially her starstruck admirer Isabella Beecher Hooker, that Victoria heard the rumors about Henry Ward Beecher, pastor of Brooklyn's Plymouth Church.

Beecher craved "unconditional approbation" but he had a mean streak. Given a fine pair of bays by a rich parishioner, he raced them for forty miles, until one horse dropped dead and the other was

Miss King is the author of The Florence King Reader *and other books.*

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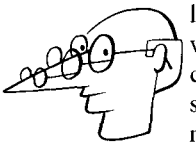
lame. Rejecting harsh Calvinism, he concocted a "feminized, romantic conception" of religion as a warm, indiscriminate bath of love. To be truly religious, he told his flock, you must sin, since Christ can't very well save you if you don't. There was no such thing as orthodoxy, he said; "Orthodoxy is my doxy and heterodoxy is your doxy."



Beecher's doxies were in the amen corner every Sunday, gazing up at him adoringly as he championed women's rights and called God "Mother." One of his mistresses made a deathbed confession to her husband that she had gone regularly to Beecher's study, letting herself in with the key he gave her, until she saw another woman entering with a key. She died and her husband kept quiet out of pride, but then Lib Tilton confessed *her* affair to her editor-husband Theodore, a political activist known to the suffragists, and Victoria Woodhull found out about it.

By now her megalomania was full-blown. Lionized as suffragism's most electrifying speaker, she called herself "the evangel" and claimed her spirits had told her she was destined to rule the world. In 1872 she was nominated for President by the far-out Equal Rights Party and advocated free love, calling marriage "the most terrible curse from which humanity now suffers." The radical suffragists ate it up but the moderates recoiled, especially Catherine Beecher. "You speak of free love with derision while your own brother practices it," Victoria accused. "I do not condemn him, I applaud him!"

Convinced that she could make Beecher come out publicly for free love, she dropped hints of the Tilton affair in her weekly. She was riding for a fall, and it came. Her reprobate family, which now included both husbands—Colonel Blood, whom she had married, and Dr. Woodhull, whom she had not divorced—as well as her utopian socialist lover, Stephen Pearl Andrews, exploded in a bloody brawl and ended up in police court.

The press had a field day with this Grant-era version of trailer-park trash. They had made Victoria an overnight celebrity and now they made her an overnight laughingstock. This was the same week that a beaming, teary-eyed Beecher celebrated his 25th anniversary as pastor amid flower-tossing children. Determined to bring the hypocrite down with her, Victoria published "The Beecher–Tilton Scandal" on the front page of her weekly, sparing no salacious detail and "defending" the preacher with the doctrines of free love.

"Every great man of Mr. Beecher's type has had in the past and will ever have, the need for and the right to the loving manifestations of many women," she wrote. "With his demanding physical nature, passional starvation, enforced on a nature so richly endowed, is a horrid cruelty."

Victoria was arrested by Anthony Comstock for sending obscenity through the mails and spent Election Day in jail. The only person to stand by her was Isabella Beecher Hooker, but when Isabella tried to speak on free love from her brother's pulpit he got a doctor friend to say that the "satanic influence" of Mrs. Woodhull had made her temporarily insane, and committed her to an asylum.

The church held an examination of the Beecher affair. Lib Tilton was found guilty of plaguing the preacher with "inordinate affection," and Beecher was reprimanded for allowing his "great generosity" to blind him to the perfidy of such women.

Elizabeth Cady Stanton called it "a holocaust of womanhood," but the best spin came in Theodore Tilton's unsuccessful civil suit against Beecher.

Eunice Beecher stood by her man. Her husband had been taken advantage of, she testified, because "it is hard to convince the dear, guiltless, simple-hearted man that such baseness and treachery could exist."

If you want to know what happened to Victoria and Tennie, read the book. In addition to being a brilliant evocation of the Gilded Age, it's the best analysis I have ever read of the sucker gene in the American DNA. □

With Friends like This . . .

LINO A. GRAGLIA

STEPHEN Carter, a professor of constitutional law at Yale, argues in his new book, as he has many times before, in favor of greater governmental respect for religion and religious people. He berates "liberal constitutionalism" for favoring a view of the world

The Dissent of the Governed: A Meditation on Law, Religion, and Loyalty, by Stephen L. Carter (Harvard, 192 pp., $19.95)

that is "deeply secular and pressing for change" as opposed to a view that is "deeply religious and tied to tradition." His defense of religion and tradition is weakened, unfortunately, by the fact that he is himself a deeply committed liberal.

The title of his book refers to his argument that the legitimacy of government depends not only on the consent of the governed but also on the responsiveness of the government to dissenting groups. His basic purpose is to argue for greater government acceptance of the "autonomy of communities," particularly minority religious communities. He enticingly refers throughout the book to "family values" and "traditional values" and denounces judicial hubris and liberalism's militant secularism. Yet he also espouses the quaint belief that "Bill Clinton won the Presidency in 1992 and again in 1996" because Americans have a "yearning for morality" and therefore seek leaders "who they believe will speak in the language of right and wrong." Republicans' winning control of the House and Senate in 1994, however, was the result of a "massive act of disallegiance."

Despite his sincere opposition to liberalism's devaluation of religion, Carter is unable or unwilling to take a squarely pro-religion position on almost any issue. He recognizes, for example, that there is "overwhelming popular support for school prayer," but he remains a "skeptic" on the issue. He argues for a "strong commitment to parental autonomy on the religious education of children," but he pronounces himself "an agnostic on the subject of state support of private schools." He criticizes the Supreme Court's decision in *Roe* v. *Wade* as "largely unexplained," but he adopts the baseless pro-abortion claim that it involves "the right to reproduc-

Mr. Graglia is the A. Dalton Cross Professor of Law at the University of Texas School of Law, at Austin.

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tive privacy" and is unwilling to conclude that it was "wrong."

Despite his call for a return to family values and his criticism of liberals' "post–civil-rights love affair with judicial power," Carter approves of one of the most arrogant abuses of judicial power, *Romer* v. *Evans*, in which the Court invalidated an amendment to the Colorado constitution adopted by popular referendum to preclude granting special rights to homosexuals. "Sexuality in the pure sense—whom one chooses to love and how one chooses to do it," he argues, "seems self-evidently private . . . in the traditional constitutional sense," making religious objections to homosexuality "fairly easy to rebut." With a champion like Carter, one is tempted to conclude, traditional values have no need of an antagonist.

Carter's defense of dissent includes an argument that dissenters need not always accept punishment for law-breaking or even avoid violence, because "violent dissidents" may be the moral equals of "violent enforcers" of the law, the police. A "fundamentally unjust sovereign," such as the United States during the "era of Jim Crow," has "yielded its exclusive right to use force, which means that the disobedient, even the religious disobedient, could use force too." Unfortunately for such dissidents, the fundamentally unjust sovereign is the sovereign least likely to agree that it has yielded such a right. Carter also favors jury nullification—that is, allowing lawyers to argue to jurors that they are not obliged to follow the law. Obliging jurors to follow the law, he believes, is "simply undemocratic" and assumes "the absolute justice of the will of the secular sovereign." In reality, it assumes only that policy issues are to be settled by the democratic political process rather than by 12 individuals selected for a different purpose.

Carter's principal argument for community autonomy is that individuals should be constitutionally exempt from the application of laws to which they have a religious objection unless an especially strong state interest can be shown. He repeatedly denounces *Reynolds* v. *United States* (1879) for refusing to hold unconstitutional a federal statute prohibiting plural marriage: "the Mormons discovered that their constitutional right to freedom of religion did not extend to the practice of polygamy—in short, that they were not free, within the confines of their own places

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of worship, to marry whomsoever they might choose." One of his "favorite decisions," on the other hand, is *Wisconsin* v. *Yoder* (1972), in which the Court created a constitutional exemption from Wisconsin's application of compulsory education to the children of objecting Amish parents. Carter's opposition to judicial hubris and advocacy of restraint do not apply, it seems, when, respectively, they produce or fail to produce the results he favors.

With a champion like Stephen Carter, traditional values have no need of an antagonist.

Carter sees the granting of a religious exemption from the application of ordinary law as a means of serving community values. It could be more accurately described, however (it is, after all, strongly favored by the ACLU, no friend of religion) as still another example of permitting an assertion of individual rights to overcome community values. A community in which individuals may "marry whomsoever they might choose"—that is, in which the individual rather than the society defines the basic social unit, the family—would probably be unique in human history and hardly recognizable as a community at all.

Carter applauds a Court decision disallowing the application of a prohibition of door-to-door solicitation to one who is "required by the tenets of her religion to go from one house to the next to raise funds." The result was that a factory town could not protect night-shift workers from being awakened by the unwanted ringing of their doorbells. In a more recent decision of the same type, the Court held that laws in Hialeah, Florida, against cruelty to animals and public slaughtering could not constitutionally be applied to ban animal-killing exhibitions performed as part of a religious rite, even though the rite often also required depositing the carcasses in public places. Such decisions are not supportive of but antithetical to community values, increasing the annoyances and hardships of everyday life that drive people to seek relief in some form of relative isolation.

Carter recognizes that the religion guarantees of the First Amendment were meant to protect the states from interference by the Federal Government, including the Supreme Court, in matters of religion. The Court's purported interpretation of the Amendment to impose restrictions on the states, therefore, "says in effect that a clause written to grant powers to the states actually takes it away." But Carter is unable to live with his own conclusion, however clearly correct, when it leads to a result which he dislikes. "Even the most dedicatedly originalist jurist would understandably—and rightly—hesitate," he argues, before declaring that state establishments of religion are "perfectly fine." Of course the jurist would not have to declare that they are perfectly fine, but merely that they happen not to be prohibited by the Constitution. But, for Carter, if the Constitution fails to prohibit a policy choice of which the liberal constitutional theorist disapproves, he is justified in writing a prohibition in.

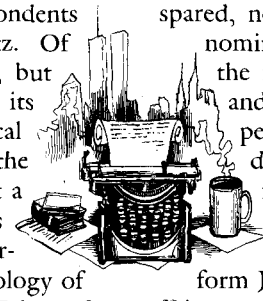
It is only the Constitution as continuously rewritten by the Supreme Court that saves us, scholars like Carter believe, from the benighted policies favored by the American public. This is the reasoning that has given us the constitutional law we have today. In reality, however, the Supreme Court is not saving us from an establishment of religion, which is prohibited by most or all state constitutions and favored by no one. It is "saving" us only from states or local communities having the power to provide for prayer and Bible reading and display of the Ten Commandments in the schools and to aid private, including religious, schools. □

CITY DESK

All Nice, All the Time

RICHARD BROOKHISER

NEW York City has been arguing recently over the Vatican's statement on the Holocaust. Catholics *v.* Jews: it is a special New York experience, like a Subway Series of fifty years ago, Yankees *v.* Giants or Dodgers. The letters pages of the newspapers were filled with learned analyses by disinterested correspondents named Kelly and Berkowitz. Of course it is a serious matter, but the way New York takes it to its bosom manages to make it local and little. I don't know how the larger issue will turn out, but a bar mitzvah I attended this month prompts me in the spirit of the times to offer an apology of my own, on behalf of WASPdom, for what we have done to Judaism in this country.



The service was on the Upper West Side, and the congregation was middle of the road for that neighborhood (call it middle of Broadway): neither a turn-of-the-century Power Temple, nor yesterday's gay or Lubavitcher improvisation. The lad who became a man was a bright kid. The service, however, was dismaying. I could tell we were in for trouble as soon as we entered the sanctuary and saw, on a metal stand behind the rabbi's pulpit, a guitar.

The waiting guitar, menacing and silent (but not for long), said it all; the rest is commentary. But since I was not spared, neither shall you be. The denomination was Reform Judaism, the faith my wife was raised in, and like all formerly observant people she has a deep and dogged attachment to the forms of her youth. Her Tory grumblings confirmed my hayseed reactions. Reform Judaism seems to have ridden off in two directions at once. The service had adopted many Orthodox touches, like old knickknacks picked up at a flea market. But it was also suffused with a hearty pop camaraderie. More comradely even than the strumming rabbi was the cantor, a woman whose vocal style had been shaped by Barbra Streisand and summer camp: from "People Who Need People" to "Sipping Cider." It was a relief when we finally arrived at the Scriptural readings and

Mr. Brookhiser is a senior editor at NR.

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could turn our minds to the Golden Calf. But there was one more surprise in store, like liqueur in a candy. At the end the rabbi put his arm around the young man and announced that *Eloheinu* Himself could not have read better. *Eloheinu* means God. What? These are the people to whom the First Commandment was given? Surely I misheard; what Rabbi

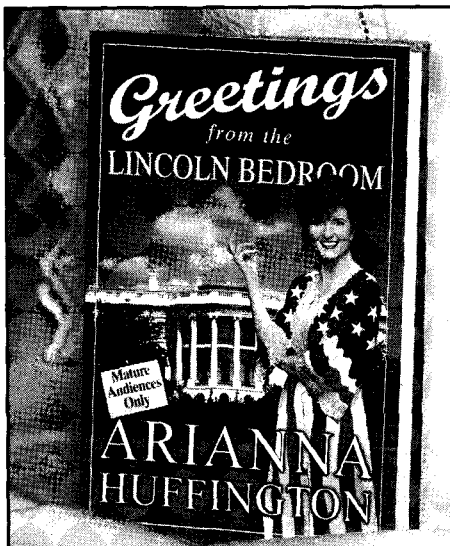
George Santayana said the three things he liked best about America were football, jazz bands, and kindness.

John Denver must have said was *Eliyahu*, Elijah. From blasphemy to fatuity: Elijah would probably be a good reader. He was in top form when addressing the priests of Baal.

Reform Judaism was once a different package: its services used only essential Hebrew, and no one wore yarmulkes; the sermons were straight talk on serious subjects. The Jewish Reformers of the nineteenth century were trying to bring their faith in line with modernity, which, in this country, meant the Protestant establishment. One earnest, verbal culture converged with another.

Protestantism was once a force in New York. Episcopalians were always a special subset, if only because they owned some of the choicest real estate, given them by Queen Anne. But nationally famous preachers of other denominations had pulpits here too, from Charles Grandison Finney to Henry Ward Beecher to Norman Vincent Peale. New York Protestants were once even powerful enough to fight among themselves: it is said that in the Twenties John D. Rockefeller Jr. offered to finish the Episcopal cathedral of St. John the Divine on Morningside Heights. Bishop William Manning said fine, so long as he converted. Rockefeller, a Baptist, took his money and built Riverside Church half a mile away, overlooking the Hudson.

Now you could probably fit all the white Protestants in New York into the Felt Forum, but they still set the tone. And what a tone it is. We are not responsible for Barbra Streisand, but the guitars, the folk songs, the folksi-



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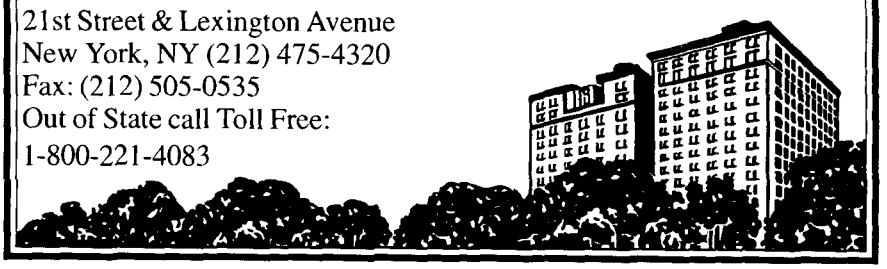

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ness—that is all ours. The tone is transtheological, infecting Unitarians and evangelicals alike. The music of megachurches is as bad as any hippie cleric sing-along. How did it happen? Friendliness is not a bad thing, within limits. George Santayana said the three things he liked best about America were football, jazz bands, and kindness. But the great agoras of democracy and the marketplace, combined with the priesthood of all believers, can easily tip into all nice, all the time.

Look what WASPs have accomplished. We have destroyed ourselves, and American Catholicism. I saw the smoking wreck of Judaism. Let the Moslems set up shop here, we'll get them too. Around the corner from NATIONAL REVIEW there is a restaurant advertising itself as "Halal Chinese" (halal is the Moslem version of kosher). It starts with the food—in New York, Chinese is a kind of bland all-American take-out—but it ends with the sermons. In twenty years, I expect Louis Farrakhan Jr. to be humming about Dr. Yacub to the strains of "Kumbaya." □

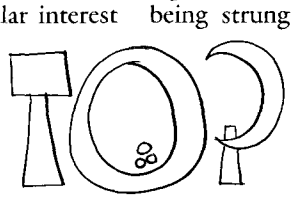
TELEVISION

Cable Gal

ANDREW STUTTAFORD

"I'M watching Lifetime." These are words that no man wants to hear, especially from his girlfriend. The evening ahead has just been poisoned. He will be transformed from Top Gun into Tailhook. He will be shunned as a suitor who just does not "get it." He will be accused, indicted, and condemned, found guilty by association with his shabby fellow males and their vile crimes—the crimes that Lifetime, cable's "Must-She TV," loves to detail.

As part, no doubt, of its mission. Lifetime is now available in 69.5 million households. The channel's purpose is, it claims, to provide "contemporary, innovative entertainment and information programming of particular interest to women." And so you find cooking shows, reruns of *The Golden Girls*, and programs about babies. But, above all, you find movies about bad guys. Lots of them. There are men who murder, chaps who cheat, and husbands who hit. Taken individually, these movies (most of which are not actually made by Lifetime) are unexceptional, but show them day after day and they become something else. In effect, Lifetime uses its movie selections to create one endless loop of *The Perils of Pauline*, with a script by Anita Hill and special effects by Lorena Bobbitt.



Within a few recent Lifetime days, viewers could see men batter (*The Burning Bed*), fool around (*When Husbands Cheat*, helpfully shown on Valentine's Day), and kill (*The Babysitter's Seduction*). The villainous spouse in the last of those films almost pulled off a trifecta. He killed his wife, slept with the baby-sitter, and then nearly (you cannot have everything) managed to have the baby-sitter blamed for the murder.

Well, he wore a suit, and that was the giveaway. The Lifetime criminal tends to be urbane and easy on the eye. In his youth he was probably a frat boy, like Billy, perhaps, in *Full Circle*. Billy, a Banana Republic ad gone bad, with his floppy blond hair and red polo shirt, rapes the daughter of the woman who is being strung along by his father. The assault is covered up, and Billy will doubtless go on to commit further outrages in his middle age, by which time he will probably be played by Robert (*Spenser for Hire*) Urich, a man frequently present at Lifetime's death scenes.

In *Deadly Relations* Urich cheats on his wife, lingers perhaps a little too long on that goodnight kiss with his daughter, kills not one but two sons-in-law, and then shoots his own hand off in a botched attempt at insurance fraud. Outwardly, of course, he is eminently respectable, a war veteran, exactly the sort of male authority figure that Lifetime loves to show as the most dangerous threat of all.

Men like this operate under cover of the position given to them by, so the argument runs, our violently patriarchal society. They are camouflaged by their good jobs, smart cars, and conservative suits. Away from the office there will be lots of plaid, Eddie Bauer perhaps. The Lifetime villain will be clean-shaven; his eyes will not stare. His only distinguishing characteristic is deceitfulness. He is no Freddy Krueger, no Leatherface, no Jason. A Lifetime killer would not be seen dead in a hockey mask. He could be you or me.

Which is just the point. It may be MacKinnon Lite (a channel that features *Celebrity Weddings in Style* cannot be all bad), but don't be under any illusion. Lifetime is Rodham country. The not-so-subtle message of its dim movie-of-the-week feminism is that women must circle their wagons against the enemy with a penis.

The not-so-subtle message of Lifetime's dim movie-of-the-week feminism is that women must circle their wagons against the enemy with a penis.

After all, those predatory white males aren't isolated cases. They are all over the place. Traditional villains understood that dark deeds had to be confined to the graveyard, the dungeon, or the haunted house. Not this lot. They will do their worst anywhere: in the mall, the executive suite, and, surprisingly often, the kitchen. No one can be trusted, not even Michael Gross, the genially ineffectual father from *Family Ties*, who reappears in *With a Vengeance* as a dentist and serial killer.

But not an efficient one. One of his victims, played by a Melissa Gilbert who has strayed a long way from that little house on the prairie, survives. Carelessly, though, she forgets the whole incident, and it is only when her amnesia fades that his problems begin.

In this case the recovery occurs quite quickly. However, in another film on Lifetime, *Shattered Trust: The Shari Karney Story* it takes the forgetful Miss

Mr. Stuttaford is a writer in New York City.

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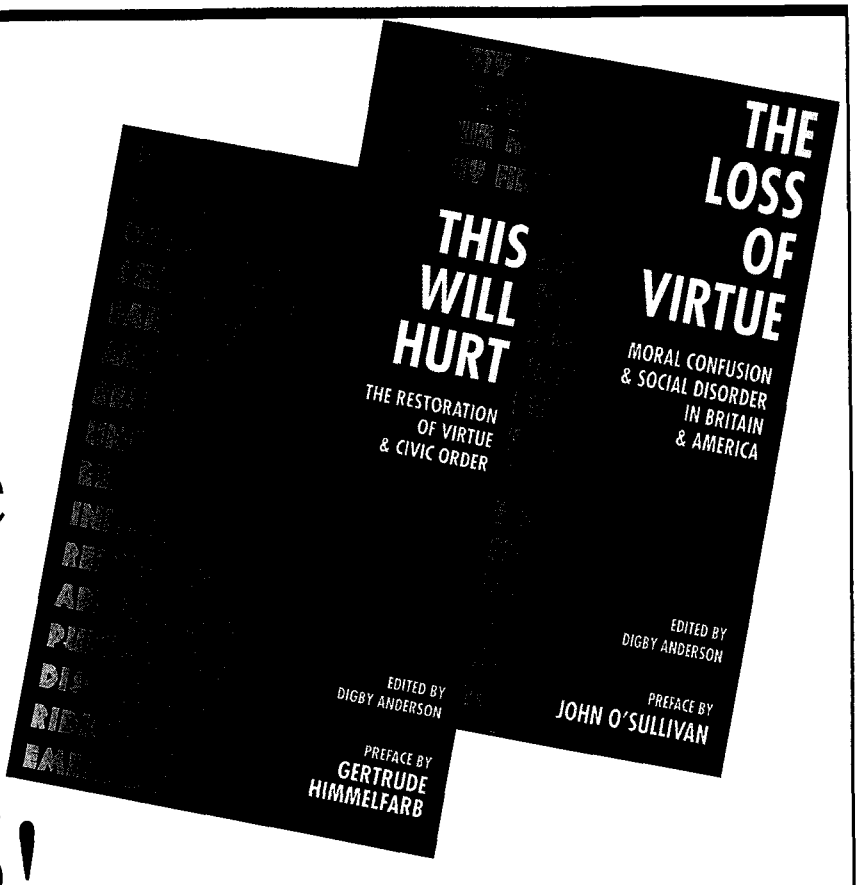
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Gilbert about a quarter of a century to remember years of sexual abuse at the hands of her father. He, of course, is an educated man, a journalist. And just in case we don't get the message, our heroine warns against disbelieving allegations in regard to another suspected child molester just "because he looks good in a suit."

But why stop at child abuse? Much as it enjoys that subject, Lifetime also offers some gymnast abuse (*Little Girls in Pretty Boxes*) and even a bit of biathlete abuse (by Montana mountain men in *The Abduction of Kari Swenson*).

To be fair, not all men are bad, even on this channel. Harry in *Full Circle* is kind, sensitive, and a wonderful father. A good man. Significantly, perhaps, he ends up in a wheelchair and dies. But if the good man is an exception in a Lifetime movie, the good woman is not. She may be a little weepy, but she can generally survive life's challenges, be they a murderous husband, a hard day's shopping, or a bout with cancer.

She is not perfect, of course, but when she slips Lifetime understands. And shows something of the double standard that we see further revealed in the titles of two recent "Lifetime Originals" (movies specially commissioned by the channel). So far as Lifetime is concerned, *When Husbands Cheat* they are to be cut no slack, but when the missis plays around, her misbehavior is merely *The Indiscretion of an American Wife*.

The indiscretion enjoyed by the American wife in question (Anne Archer, avenging the wronged spouse she played in *Fatal Attraction*) is romantic and forgivable. Her husband, Russell, a WASPy diplomat whose insensitivity is revealed by his lack of interest in modern dance, is dumped in favor of a handsome Italian, Matteo. And who can blame Miss Archer? Matteo owns a vineyard and a villa.

Lifetime's unfaithful husbands, however, generally have to make do with a motel room. Their infidelity is usually portrayed as a tawdry, rather selfish affair. Big hair and little dresses will be on display, and it will all end badly. The man is left begging for forgiveness, humiliated or worse. In *House of Secrets* the betrayed wife—played by, yes, Melissa Gilbert—dies, but no matter. With the help of some voodoo she comes back from the dead and frames her husband for his girlfriend's murder.

How unusual. One Lifetime is enough to see off most men. □

ART

Is It Art?

JAMES GARDNER

RECENTLY I was discussing the Whitney's Bill Viola retrospective with a member of the museum's staff, the sort of earnest young art-world type whose professional credentials consist most conspicuously in her wearing only black. She astonished me, however, by asking in complete earnest whether I thought the work on display was indeed art. I was surprised because I did not imagine that such innocent questions were still being asked in the circles in which she moved. Especially since the institution that employs her has played host of late to Sue Williams's imperishable puddle of (plastic) vomit and to Jeff Koons's basketballs floating in a fish tank.

The question Is it art? has haunted our visual culture since the middle of the last century. Lately, it has been posed most insistently in Yasmina Reza's play *Art*. Each generation has tried to outdo the last in seeking ever more daring and original forms of visual expression. Bill Viola has chosen to accomplish this through video art. His new exhibition is radically different from the standard fare at the Whitney or anywhere else. Two and a half floors have been transformed into a nocturnal labyrinth whose every nook and cranny burps, splutters, flashes, and gleams with 18 different installations.

The question Is it art? has haunted our visual culture since the middle of the last century.

Video art is the invention not of this generation but of the preceding one, especially of men like Nam June Paik and Bruce Nauman, two moderately lousy artists whom Viola cites as his mentors. I must confess that, life being short, I tend to have a very limited tolerance for their medium. The most obnoxious thing about it is not its being trivial, unlovely, and tendentious, though it is all of those, but rather its usurping time as well as space. Thus it arrogates to itself whole registers of dullness such as bad visual art has traditionally envied in the sister arts of bad writing and bad music. Most of it looks and sounds like America's Stupidest Home Videos, with some morbidly earnest basket case conjugating the verb *to be* for seven hours straight. It tends to be overwhelmingly conceptual rather than visual, with emphasis not on anything as passé as beauty, but on the force and intelligence of the ideas that are rumored to undergird the specific work of art.

Yet Bill Viola is different from the average video artist. What makes the art question more pressing in his case is that he cannot be so easily dismissed. His work can be divided into three categories: the purely conceptual, the purely visual, and a hybrid of the two. The first part of his oeuvre is as bad and forgettable as video art usually is. In *Reasons for Knocking at an Empty House* you, the viewer, sit in a contraption that resembles an electric chair and watch a video of a man watching you. Every now and again, someone comes up behind the man and smashes a gong in his ear. Fortunately, other works by Viola exploit the purely visual strengths of video to create a kind of mixed-media sculpture whose results are sometimes impressive. In *The Veiling*, according to the well-chosen words of the brochure, "images of a man and a woman moving through a series of nocturnal landscapes are projected into parallel layers of loosely suspended translucent cloth." Out of this work emerges a wraithlike, diaphanous loveliness, a distillation of dream imagery that is the recurring theme and the foremost strength of Viola's art. In the best postmodernist vein, it combines an attention to texture and sentiment with a real feeling for some admittedly untraditional forms. Finally, the

Mr. Gardner is NR*'s art critic.*

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two strains, the visual and the conceptual, converge memorably in *The Crossing*. Here total darkness is projected simultaneously onto two large screens set back to back. Out of the darkness, in extreme slow motion, a nightmare figure emerges and begins advancing inexorably until he comes to a halt directly in front of us. On one screen a fire begins at his feet and grows until he is consumed in the roaring conflagration. On the other, a few drops of water falling on his head become a thunderous torrent that presently overwhelms him.

The main weakness of such work, when it is not simply inane, is that its force derives far more from loud noise and large scale than from the choiceness of the images or the manner in which they are used. But when Viola does succeed, as in *The Crossing*, with its strong pictorial qualities, or *The Veiling*, with its strong sculptural qualities, one need have no further doubts that it is indeed art that he is creating. In the best postmodern style, these works deploy new media and a new temperament in pursuit of the same ends that visual art has sought and found since its very inception. □

FILM

Dead as Doornails

JOHN SIMON

SCHOPENHAUER defined the arrogance no great man is without—the one that contemns the views of his contemporaries and lets him, undisturbed, create what they censure, and despise what they praise. David Mamet has devised a different arrogance: concocting plays and movies of a self-indulgent, uncommunicative sort, then browbeating the public into acclaiming them and him. The tricks are excessive ellipsis and undue convolution: surface portentousness hiding shallowness, hollowness, or actual nonsense. The cinematic variety, somewhat different from the theatrical, is typified by his latest, ***The Spanish Prisoner***.

David Mamet is fatally drawn to con men (guess why!), who threaten to monopolize his oeuvre.

The idea—if it deserves the name—is that almost everyone is corrupt if not utterly evil, appearances lie, and only our hero is thoroughly good, even if more gullible than a dozen Candides. The hero as dope is a very hard sell, especially where there is no shred of credibility, not even enough for a g-string to cover the naked untruth.

Joe Ross, our hero, invents a new "process" for his company, which stands to earn billions from it. This is revealed during a company retreat on St Estèphe, where Joe also begins to fall for Susan, a new secretary. There, too, he meets Jimmy Dell, a jet-setter to whom he renders a small service. In return, Jimmy warns Joe that his boss, Klein, may not properly reward him for the process, and offers to help him get his due. Back in New York, Susan and Joe become involved with each other, even though Jimmy is trying to arrange a date for Joe with his mysterious sister who somehow never shows up.

The holes in the ensuing plot could make a pair of riding boots look like mesh stockings. Unlikely twist jostles twist, compared to which your average snake is a paragon of rectilinearity. Example: Jimmy takes Joe to dinner at his posh club without realizing that Saturday night is for members only. No matter. Using his influence, he immediately gets Joe an application for membership, which our hero signs without reading. This turns out much later to have been an application for asylum in Venezuela, which does not have an extradition agreement with the United States; this will duly queer him with the law. It also turns out that the supposed club was really a restaurant rented by Jimmy for the day and promptly made to look like

Mr. Simon is NR*'s film critic.*

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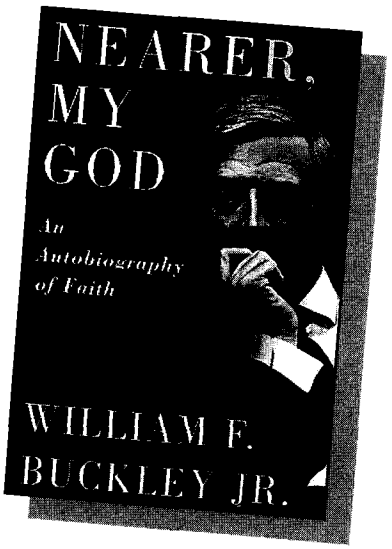

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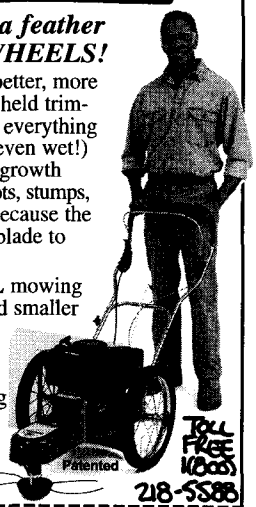

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a club. And so on ad infinitum or nauseam, whichever comes first.

But let's look now at some typical dialogue, the very sample proudly adduced in the press kit: "JOE: Who in the world is what they seem . . . ? JIMMY: People aren't that complicated, Joe. Good people, bad people, they generally look like what they are. JOE: Then why are so many people having difficulty? JIMMY: That's what baffles me." So which of these supposedly smart guys is the bigger dolt: the one who gravely proposes that people aren't what they seem, or the one who earnestly contends that they are? And all in such lively language, too.

Mamet is fatally drawn to con men (guess why!), who have assumed progressively greater roles in his oeuvre and threaten to monopolize it. He once worked briefly for a Chicago real-estate (or was it advertising?) firm, on the strength of which he knows everything about big business, which he cavalierly equates with con artistry. If this view, put forward with the persuasiveness of ten-year-olds personating cowboys and Indians, holds true, we might as well forget free enterprise and embrace Communism pronto.

Campbell Scott (Joe) is a compelling young actor, and most of the interest of *The Spanish Prisoner* (don't ask me to explain the farfetched title) derives from him. The rest comes from Steve Martin (Jimmy), whose personality and performance make something out of very nearly nothing. Ben Gazzara is defeated by the skimpy part of Klein, and Rebecca Pidgeon (Susan) and Felicity Huffman (FBI agent McCune) add precious little. Especially Miss Pidgeon, in private life Mrs. Mamet, who could not sell herself as a love interest to anyone but her husband. A paltry person of bulging eyes and smarmy ways, with the voice of an agent provocateur, she can make every part lavished on her by her spouse come out exactly the same.

Another actor whom Mamet likes to employ is Ricky Jay, a magician working exclusively with cards—hence a quasi-cardsharp enormously appealing to Mamet. Yet his oily visage, voice, and personality are hard to take, especially since all his magic cannot conjure up a performance. As director, Mamet is scarcely better than as scenarist. Asked how he managed "the Big Trick of the Film," in which two outwardly identical books are switched, he answers, "We cut the camera between shots. Simple."

■ Not dissimilar is ***Wild Things***, about dark doings in a Blue Bay, Florida, high school, where the girls lust after Sam Lombardo, a nice guidance counselor with a dubious past. When Kelly Van Ryan cannot seduce him, she tells her socially prominent mother, Sandra (who once did have a fling with Sam), that he raped her. The only one available to represent him in court is the town's shadiest lawyer, willing to go up against the wealthy attorney whose daughter is Sam's current bedmate and who is helping Sandra wreak vengeance on Sam.

Also around are Ruby (the brash proprietress of the local fishing camp *cum* low dive, where her son wrestles alligators) and her slatternly daughter, Kelly's most disreputable classmate, who agrees to testify that Sam once raped her, too. Investigating the case are Ray Duquette and Gloria Perez, a rather odd pair of detectives.

Here, too, the basic element is the plot twist, one every few minutes, and several even interspersed with the closing credits, which is like printing the last chapter of a crime novel on the back cover. The film, written by Stephen Peters and directed by John McNaughton, resorts to pretty desperate strategies to fool the audience. Billy Crystal plays the shyster amusingly, and for seekers of feminine pulchritude there is Denise Richards as Kelly, a dead ringer for the young Simone Signoret but unlikely to duplicate her talent. As Kelly's mother, Theresa Russell is abundantly endowed with a riper allure, copiously displayed. For female viewers, there is Matt Dillon (Sam), whose charms are as lost on me as his talent, and Kevin Bacon (Ray), here looking his worst. For everyone's disgruntlement there is Daphne Rubin Vega (Gloria), a minor disaster in the stage *Rent*, whom the camera's merciless eye heightens into a major catastrophe.

■ What struck me first about Mike van Diem's ***Character*** was the creaky sub-Dickensian plot adapted from a 1938 Dutch novel by the young director and two collaborators. Next, the attitudinizing, *Caligari*esque cinematography that might have impressed in a student film. Then the acting by a cast as unwinning physically as histrionically. Also (at least in the subtitles) the flatfooted dialogue. Finally, the by now almost obligatory wretched musical score. With all that going for it, I felt, this nominee for the Best Foreign Film Oscar had to win. And so it did, with van Diem disporting himself at the award ceremony almost as obnoxiously as *Titanic*'s James Cameron. I am only slightly relieved to learn that van Diem mixed his own fantasies into the screenplay, which gives the novelist, Ferdinand Bordewijk, a possible out. No out, however, for the Academy's fogeys and their retro picks. Unless they are all Hollanders, this being the third Dutch film in recent years to usurp the prize. □

BOOKS IN BRIEF

The Impeachment of William Jefferson Clinton, by R. Emmett Tyrrell Jr. and Anonymous (Regnery, 275 pp., $24.95)

BOB Tyrrell and his anonymous co-author must be chuckling every day as life imitates "docudrama" (as they've styled their book). Published just weeks before the Monica Lewinsky dam burst, this work of imagination recalls the hundreds of previous examples of stonewalling, obstruction, arrogance, and corruption that have characterized the Age of Clinton. Through an imagined impeachment hearing, we are reminded of the origins of Filegate (Bernard Nussbaum's office requested the raw FBI file on Billy Dale *after* he had been fired); the "vacuumed" Rose Law Firm files; and the arms merchants and drug dealers given White House access for a price. Bolstered by excerpts from congressional reports and news accounts, *The Impeachment* proves a handy manual to the non-sex Clinton scandals. The book's premise, however—that an impeachment of the President is possible on abuse of power alone—looks weaker in the light of recent developments. The authors imagine George Stephanopoulos counseling Bill Clinton that he may become the first casualty of a "cultural backlash" against the new morality of the baby-boomer generation. Sigh. It should only be so. —MONA CHAREN

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Tobacco Road Ahead

NEW YORK, APRIL 10

One problem with the tobacco fight is that to tackle it objectively ends you up accused of indifference to people dying of lung cancer. One should attempt to fight free of the stigma long enough to ask the simple question: Should tobacco companies welcome suicide? The answer is obvious.

Now with the declaration by the head of RJR Nabisco that his company was going to pull out of the pending bill fathered by Sen. John McCain, we are required to look into the resources of the contending parties, beginning with the great anti-tobacco public lobby.

Now I know a lot of these folk, and in a sense am myself one of them. But there is the other popular lobby from which not much is heard, yet I'd suspect they vote very emphatically with their feet. They are the smoking lobby—the people who smoke cigarettes, about 45 million of them. If you pit the political energy of the anti-tobacco people against that of the smokers, you would find more heat emanating from the former, but more determination from the latter. The reason for this is simply that anyone who smokes has discounted the risk of cancer and doesn't really want to be deprived of cigarettes by pricing policies directed by Congress.

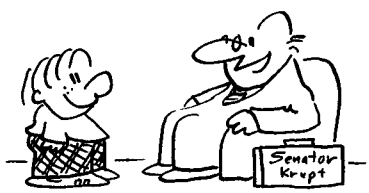
What Mr. Steven Goldstone of RJR is saying (and his declaration was instantly endorsed by the other major tobacco players) is: Okay, Sen. McCain: you and Congress use the instruments at your disposal. We will fight with ours.

What Congress can do is something a little less than merely terminate teenage smoking. The Senate committee had come up with an interesting idea. If by Year 3 the incidence of cigarette smoking hasn't decreased, why then certain afflictions on the tobacco companies are activated. The response of the tobacco people bears heavily on the Fourteenth Amendment, which says that nobody can be punished without due process of law. What is the liability of RJR Nabisco if Johnny begins to smoke at age 15? Can anybody prove that RJR seduced Johnny? There are laws against Johnny's smoking, or at least against his buying cigarettes. Enforce those laws, and what do you get? I was a juvenile-delinquent smoker and feared my parents' detection much more than the policeman's—are they to be marshaled to the cause of prevention? Nobody knows for sure, but everybody knows that existing laws against selling cigarettes to minors (and for that matter, selling beer) are scantly noticed, let alone enforced. What's invited is years of court fighting, which means no tobacco-road drought for legislators hungry to win a victory popular with the anti-smoke lobby.

Where the tough guys have the definitive weapon is of course on the matter of drug policy. Here you have a straight taxonomic question. Is caffeine or is it not a drug? Answer: It is. Question: Do we therefore have a right to regulate its consumption via the Food and Drug Administration. Technically yes, and that right would presumably extend to the regulation of Coca-Cola and coffee.

What the tobacco people reasonably fear most is litigation. In the current mood, it is a plaintiff's world. A while ago a jury voted a two-million-dollar-plus award to Consumer A against McDonald's for serving coffee too hot. Any jury willing to do that would presumably be willing to vote one thousand times as much to Consumer B against the tobacco companies for damaging not the skin temporarily, but the lungs permanently. The tobacco companies were most eager, in their comprehensive settlement, to focus on limited liability. The trial lawyers, who try to match tobacco companies dollar for dollar in contributions to Congress, want none of it, and Sen. McCain's bill does not offer the ceilings on liability suits envisioned by the covenant last June.

The tobacco people's heaviest weapon is of course the smokers. The asbestos business was killed off a few years ago and most people simply yawned—if they could not get asbestos, they would get some other fire-resistant substance. But everybody who does not smoke or who gave up smoking knows somebody who still does—might even be married to him/her—and the desire to do something about tobacco falls a little short of pricing it out of reach of your neighbor, or declaring it an illegal drug. So what are the tobacco companies left with? A lot of money to wage a public fight, plus the general impression that it is reasonable for them to do so. They aren't ready to call for Dr. Kevorkian. □



"Okay, son—one more campaign promise, and then off you go to sleep."

Windy Goodfeel

NEW YORK, MARCH 10

The stirring words of President Clinton in Rwanda were welcome. What he said was that he, sitting at his desk, was guilty, as were other world leaders, for failing to move into Rwanda to prevent the great massacres of 1994. The thought was certainly welcome. Any man's death diminishes me, because I am involved in mankind. That formulation by John Donne was made in the seventeenth century and hasn't been improved upon. There remains the difficulty. What to do? What to have done?

The Jewish Defense League, not as lively as it once was, mobilized under the rubric, "Never again." The slogan was electric because in the late Sixties thought was given to what might have been done to mitigate, even to arrest, the Nazi slaughters. It is sobering to remind ourselves that even though the Holocaust occupied three full years and was done by a nation at war on two fronts, it has never been settled what it was that might have been done. There is a school of tactical thought that argues that bombing the Nazi rail lines to the concentration camps would have interrupted the flow of human traffic to the slaughter. Perhaps, but the accent is on interrupted, rather than aborted: military historians doubt that any pinpoint bombings would have been any more effective than the bridge bombings in Vietnam, which inconvenienced the North Vietnamese for periods of 36 hours.

The most extensive post-Nazi genocide happened in Cambodia. In 1975 Sen. George McGovern, who had gone down to a resounding presidential defeat three years earlier stressing the need to end the war in Vietnam, was apprised of what was going on in Cambodia. His instinctive reaction reflected his good heart, in this as in so many other matters. What he said was the

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celebrated, "Why don't we send the Marines to do something about it?" Why? For lots of reasons, including that Sen. McGovern and a majority of his colleagues had voted legislation forbidding the President to send military forces to that area of the world. Was it even suggested that these laws be repealed? And if so, that the Marines should have been sent to Cambodia? Stupid question.

The same day that President Clinton inveighed against moral torpor of the kind that immobilized the world when the Hutus killed more than five hundred thousand Tutsis, the bid was made to do something about Kosovo. That is the province within the old Yugoslavia which is 90 per cent inhabited by Albanians, who have been brutally repressed by the ruling Serbs. A few weeks ago Serbs began to engage in what is accurately called genocidal activity, their brief against their neighbors being nothing more than that they are Albanians, rather than Serbs. What happened? The usual culprits, Germany, France—NATO, to speak in round numbers—have come up with what the usual culprits come up with: reasons for doing nothing.

There is of course always the problem of what to do. You are plenipotentiary at the Oval Office. You bring in the Chairman of the Joint Chiefs. "Are you aware of what is going on in Rwanda?"

"Yes, Mr. President."

"Well, do something about it."

"Yes, sir. What?"

In an ideal world the answer would be: "*You* tell *me* what. You're a military technician, I'm not." To which the forlorn answer by the military technician would be, "Nothing can be done about it."

By nothing, of course, one means, nothing that would be politically tolerable. We lost 18 men in Somalia at about the time the ethnic conflagrations lit up a mere five hundred miles southwest in Rwanda. Americans were appalled by the losses, and in short order the Somalian venture was brought to an end. The next time U.S. forces would sally forth to restore order was in Haiti. Lloyd's of London would have given odds that not more than two Marines would be hurt in that exercise.

Somehow it is hard to fault Mr. Clinton for making the right humanitarian sounds, when visiting Rwanda. What hurts is the manifest incapacity, in a world of sovereign states and limited resources, actually to reach in and do something about it, especially having renounced colonialism. John Quincy Adams is here quoted for the millionth time, reminding us that the American people are friends of liberty everywhere, but custodians only of their own. In the best of all possible worlds we would have been there 24 hours after the first thousand (hundred thousand?) Tutsi were dead. But this isn't the best of all possible worlds, and presidential rhetoric can't make it so. □

Hype Time At the White House

NEW YORK, APRIL 3

Paul Begala and James Carville acted as if a Zapruder documentary had just been released by Judge Susan Webber Wright in Arkansas showing Paula Jones entering the governor's hotel suite, chatting with its occupant, and being shown politely to the door after a five-minute interview. Their joy was unconfined, and they celebrated by suggesting that Kenneth Starr, tool of the tobacco industry, is the next in line to be discredited. What perplexes is the wide assumption, nourished by the presidential courtiers, that the finding of Judge Wright exonerated President Clinton.

The words of the critical community swirl about us, in print and over the airwaves, but there should be no risk, given the commotion, in making several points, the first of them that Judge Wright never opined on whether Paula Jones was lying. At least, not on the principal question of public concern, namely, Did Gov. Clinton behave toward her as she charged?

Here surely are the salient findings:

1. In order to be convicted, under present law, of sexual harassment, a man needs to go further than to drop his pants in front of a woman and suggest sex. What you have to do is threaten the woman in some way for refusing to cooperate.

2. You need to punish the uncooperative woman by whatever means. Mrs. Jones didn't charge that Mr. Clinton groped her, as Mrs. Willey alleges he groped her. What she said was that his displeasure was felt in indirect ways, including a failure to give her flowers as was done to other members of the clerical staff on Secretary's Day, a failure to promote her as she might have expected to be promoted; and that the incident had caused in her a "sexual aversion," this last the contribution of an imported sexual-disorder specialist at the last minute, when Mrs. Jones's attorneys were manifestly worried that she hadn't suffered obviously enough after leaving the hotel room.

3. A jury is summoned to decide factual questions, as required to conclude guilt or innocence. If there aren't enough factual questions to warrant a bill of indictment, then there is insufficient work for the jury to perform. If the six people to whom Paula Jones reported the Clinton incident at the time are to be believed—and Judge Wright did not dismiss their testimony—then Mrs. Jones did indeed complain about what had happened. But since she let the statute of limitations that might have triggered a criminal investigation slide by, she had to abide by rules of civil conflict, and these require a starker showing of damages. The judge ruled, very convincingly, that there wasn't such a showing.

4. The attention of the American public wasn't engaged by the charge that Gov. Clinton had persecuted Paula Jones. It was engaged by the charge that he had dropped his pants as a sexual initiative. Absolutely nothing in the long opinion of Judge Wright concludes, or even presupposes, that that didn't happen. What we confront, then, is one more example of the public misconception that the judicial finding is an epistemological exercise—that it has to do with knowledge, rather than procedure. Those who jump to the conclusion that because of the court's ruling Mr. Clinton is innocent of the sexual initiative go further than they would if they assumed that O. J. Simpson didn't kill his wife because the jurors ruled him not guilty. There was no factual determination in the Wright decision. The findings were quite simply procedural.

But Messrs. Carville and Begala, even if disingenuous when saying it, are correct in declaring that the whole matter is "political." It is political in the sense that the American people appear anxious to believe that Judge Wright's finding is the equivalent of the finding that everything Mrs. Jones said was contrived and lacking in persuasive substance. It is certainly true that the legal cost of the complaint was borne by persons motivated by a political willingness to punish Bill Clinton. There is no reason to suppose that they doubted Mrs. Jones's story. Her story was persuasive enough to survive the skepticism of a battery of journalists who sifted through it at the outset. The sober analysis of Mrs. Jones's complaint by Stuart Taylor in *The American Lawyer* persuaded an apparent majority of those who looked into the matter that she had indeed been treated as she said she had.

That is how it will be left—a political scandal stillborn at the judge's hand. Unless Mr. Starr's findings cause the public to revise its reaction to Wednesday's court decision. □

(Universal Press Syndicate)

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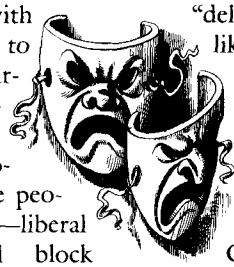
THE MISANTHROPE'S CORNER

FLORENCE KING

"CLASSIST," you may recall, is a neologism meaning someone who makes judgments based on social class. It's a perfectly good -ist, no better and no worse than any of our other -ists, -ites, and -phobes, but it never quite caught on. The only people who use it are the Marxist–feminist lunatic fringe and far-out black ranters who get on a roll and can't stop. To the latter, "classist" is a code word for whites who use "underclass" as a code word for blacks.

Everyone else has problems with it. In the first place, it's hard to pronounce and turns into a squirty hiss, tempting ableists to assume a speech defect and go through a drying-off pantomime. In the second place, the people who would normally use it—liberal intellectuals—have a mental block against it. As members of the class laboriously known as "four or more years of higher education," they have already learned that a "classicist" is a specialist in Greek and Roman literature. Try as they might, they can't shake that extra syllable: "classist" simply sounds wrong to them, the product of a typing error like the inevitable "feminity" for femininity.



The third and most important reason why "classist" has failed to catch on is that it turns the unthinkable into a conscious thought. As Midge Decter wrote: "Unconsciously is the only way Americans think about class." The subject skims across our minds like a hair blown across the face: a constant ticklish irritation, invisible but very much felt. If we tossed around a loaded word like "classist," so many strands would come loose from the snarled knot of our classless society that we could never tuck them all back in neatly; to make ourselves presentable we would have to unpin the whole business and start all over again. But since counterrevolution is another unthinkable good idea, we play it safe and impugn class-conscious people with a name that connotes self- rather than natural selection: "elitists."

Conservatives have shown a special fondness for calling the media elitists but recent events suggest that we need something stronger. We should take up "classist" and pin it on the talking heads and ink-stained wretches who described Kathleen Willey as if she were the Infanta of Castile.

The *60 Minutes* interview was barely over when the cheekbone obsession started. Willey's were "sculptured," "delicate," "pronounced," "wing-like," "aristocratic." I haven't heard so much about cheekbones since 1945. Whenever I read another Willey story I felt as if I were back in our old neighborhood movie theater watching *Laura* with Granny, who kept jabbing me in the ribs and whispering, "Look at those cheekbones—you can tell she's got good blood."

Patrician adjectives flew as commentators ennobled Willey as though their lives depended on it. Her manner was "refined," her grammar was "cultivated," her diction was "genteel," her makeup was "understated," she had a "Junior League" wardrobe, "finishing-school" posture, a "ladylike" modesty, an "upper class" lifestyle," a "Richmond society" background, and "Virginia aristocrat" written all over her.

Between these lavish accolades and what we already knew about Willey lay a glaring contradiction that altogether eluded the social arbiters: airline stewardess is not a post-deb job. For well-born Southern women of Willey's age the Big Three sinecures were the historical society, the state archives—both stamping grounds for legions of Daughters and Colonial Dames all talking about high cheekbones and good blood—and the society page of the local paper. We had a post-deb when I was on the Raleigh *News & Observer*. Typical of the breed, she couldn't write but she was invaluable because she knew where all the bodies were buried—whose wedding date had to be put back three months, why we must never photograph Mrs. A with Mrs. B, etc.

I wasn't surprised, therefore, when the shabby-wacky truth about Willey came out. When she fell from grace a subtle mood of let-down, even betrayal, seemed to pass over the media, invisible but very much felt. They had taken pains to point out that Willey did not have "big hair" but she had enough so that a single strand from her First-Families-of-Virginia coif had lain for a brief time across their collective face and made them quiver with joy. In spite of themselves, maybe without even realizing it, they had savored their interlude of unrestrained class-consciousness and were crushed when their Infanta turned out to be Pretender Spice.

THE most fascinating aspect of the media's fling with social hierarchy was the way they turned into Southerners. No one else uses words like "aristocrat," "genteel," and "lady" with such plummy abandon—or uses them at all. The Yankee upper crust, according to Joseph Alsop, simply say "nice people" and let it go at that. Nor do they elevate females to the peerage; the preferred Northern word was "gentlewoman" until the last generation that used it died out. But the Southern lady lives, along with her entourage of cheekbone fanciers, diction coaches, and shintoists so hung up on maiden names that conversing with them is like opening a bank account.

The only Southern quality kick missing from the media's investiture of Willey was the "fine-pored skin" number.

"She has such fine-pored skin that you can see evra vein in huh body," Granny announced.

"Every vein?" said my father. "She must look like a doctor's chart."

"Evra vein!"

Mere elitists don't carry on like this. Southerners have always been classists and now it seems that Americans of the better sort are, consciously or not, following suit. Even liberals can take only so much; a yearning for social hierarchy is natural to civilized people and ours has been frustrated for too long. Nowadays, all you have to do to pass for an aristocrat is wash your face and sit still. If the citizenry gets any commoner it won't be long before the cheekbone of an ass starts looking good to us, and given Bill Clinton's catholic taste in females, we may get to see one. □

Miss King is the author of The Florence King Reader *and other books.*

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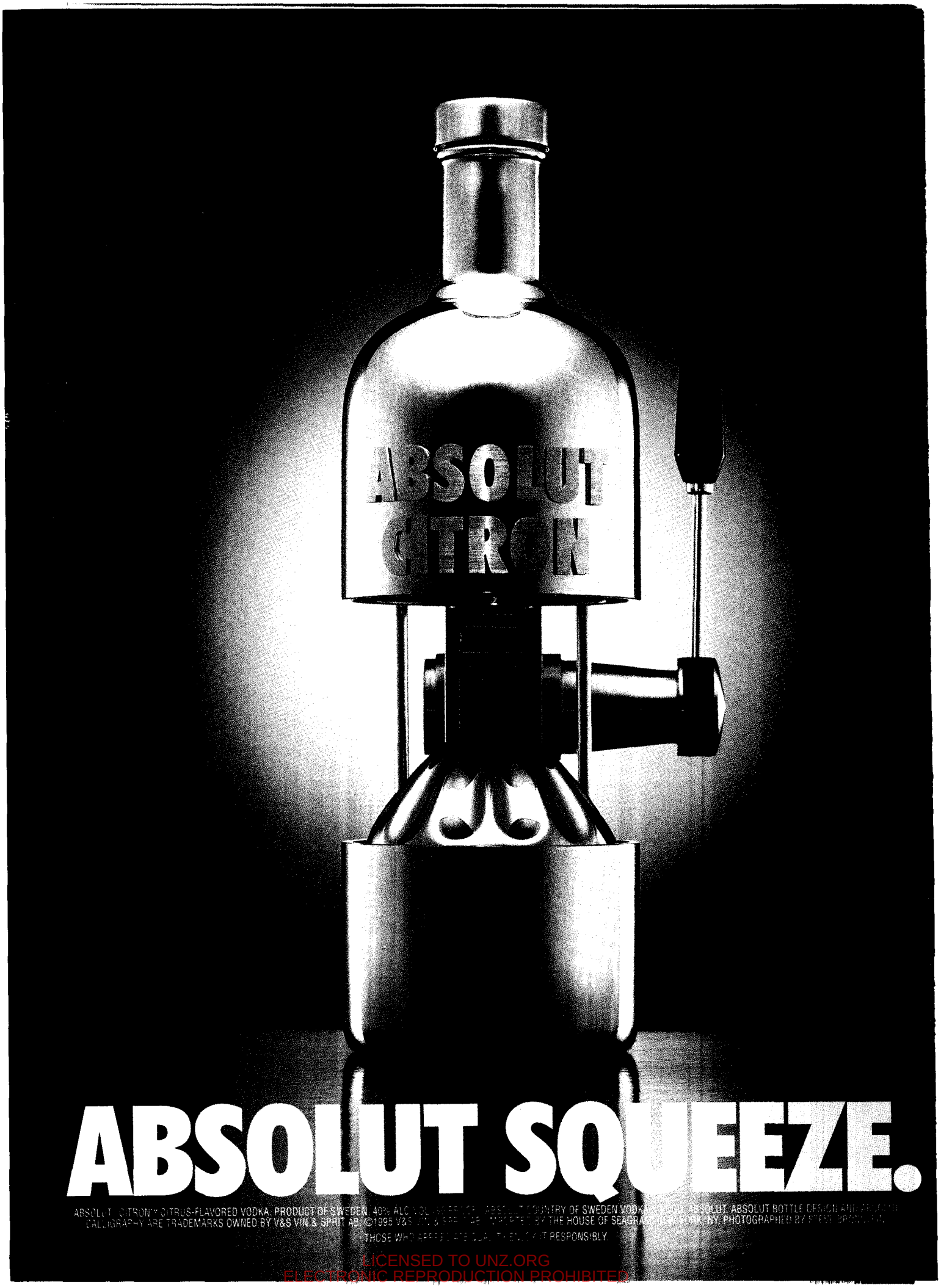

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